



# OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

July 6, 2012

Memorandum for: Deputy Commissioner, Trials

**CHAN**

Re: **Probationary Lieutenant Donna Samuels**  
Tax Registry No. 898466  
Fleet Services Division  
Disciplinary Case No. 85811/09

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on October 27, 2010 and was charged with the following:

### **DISCIPLINARY CASE NO. 85811/09**

1. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant was absent from her assignment without permission or necessity for a total of one (1) tour of duty.

**P.G. 203-10, Page 1, Paragraph 5**  
**P.G. 205-18, Pages 1 and 2**

### **GENERAL REGULATIONS ABSENT WITHOUT LEAVE**

2. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about September 19, 2009, having been informed by competent authority, Sergeant Frank Baer, to speak with two (2) supervisors who were outside her residence, did fail and neglect to speak with said supervisors. *(As amended)*

**P.G. 203-03, Page 1, Paragraph 2**

### **COMPLIANCE WITH ORDERS**

3. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about September 19, 2009, was discourteous to New York City Police Sergeant Joseph Melchionna, in that as Sergeant Melchionna approached said Probationary Lieutenant's door to speak with her, said Probationary Lieutenant immediately closed the door to her residence in an effort to avoid speaking with him. *(As amended)*

**P.G. 203-09, Page 1, Paragraph 2**

### **PUBLIC CONTACT – GENERAL GENERAL REGULATIONS**

**PROBATIONARY LIEUTENANT DONNA SAMUELS**  
**DISCIPLINARY CASE NO. 85811/09**

4. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about and between June 4, 2009 and September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant did perform unauthorized tour change on approximately forty-five (45) occasions.

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

5. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about and between June 4, 2009 and September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant did perform unauthorized overtime on approximately twenty-nine occasions.

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

6. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about and between June 4, 2009 and September 20, 2009, did fail to make proper entries in her memo book regarding tasks performed after 0030 hours.

**P.G. 212-08, Page 1, Paragraph 1**

**ACTIVITY LOGS – COMMAND OPERATIONS**

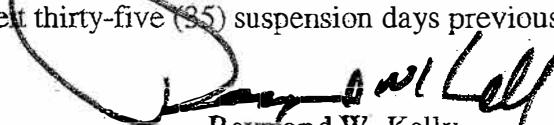
7. Said Probationary Lieutenant Donna Samuels, assigned to the 60<sup>th</sup> Precinct, on or about September 15, 2009 and September 16, 2009 engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant was absent from her assignment without permission or necessity for a total of two (2) tours of duty.

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**  
**ABSENT WITHOUT LEAVE**

In a Memorandum dated May 2, 2011, Deputy Commissioner Martin G. Karopkin found the Respondent Guilty of Specification Nos. 1, 2 and 3, Guilty in Part of Specification No. 4 and Not Guilty of Specification Nos. 5, 6 and 7 in Disciplinary Case No. 85811/09. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter, including the fact that the Respondent engaged in this misconduct while on promotion probation. Therefore, the Respondent is to forfeit thirty-five (35) suspension days previously served, as a disciplinary penalty.

  
Raymond W. Kelly  
Police Commissioner



## POLICE DEPARTMENT

May 2, 2011

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Donna Samuels  
Tax Registry No. 898466  
Fleet Services Division  
Disciplinary Case No. 85811/09

The above-named member of the Department appeared before me on October 27, 2010, November 10, 2010, December 13, 2010, February 8, 2011, and February 11, 2011, charged with the following:

1. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant was absent from her assignment without permission or necessity for a total of one (1) tour of duty.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS  
P.G. 205-18, Pages 1 and 2 – ABSENT WITHOUT LEAVE

2. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about September 19, 2009, having been informed by competent authority, Sergeant Frank Baer, to speak with two (2) supervisors who were outside her residence, did fail and neglect to speak with said supervisors. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

3. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about September 19, 2009, was discourteous to New York City Police Sergeant Joseph Melchionna, in that as Sergeant Melchionna approached said Probationary Lieutenant's door to speak with her, said Probationary Lieutenant immediately closed the door to her residence in an effort to avoid speaking with him. (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL,  
GENERAL REGULATIONS

4. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about and in between June 4, 2009 and September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant did perform unauthorized tour change on approximately forty-five (45) occasions.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

5. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about and in between June 4, 2009 and September 20, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant did perform unauthorized overtime on approximately twenty-nine (29) occasions.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

6. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about and in between June 4, 2009 and September 20, 2009, did fail to make proper entries in her memobook regarding tasks performed after 0030 hours.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS COMMAND OPERATIONS

7. Said Probationary Lieutenant Donna Samuels, assigned to the 60th Precinct, on or about September 15, 2009 and September 16, 2009 engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Probationary Lieutenant was absent from her assignment without permission or necessity for a total of two (2) tours of duty.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

P.G. 205-18, Pages 1 and 2 ABSENT WITHOUT LEAVE

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and the Respondent was represented by Roger Blank, Esq.  
The Respondent, through her counsel, entered a plea of guilty, in part, to Specification No. 4, and a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 5, 6 and 7. The Respondent is found Guilty of Specification Nos. 1, 2 and 3. The Respondent, having pled guilty, in part, to Specification No. 4, is found Guilty, in part, of that specification.

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SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Inspector Robert Johnsen, Sergeant Frank Baer, Captain William Taylor, Sergeant Joseph Melchionna, Lieutenant Roger Dechen and Lieutenant David Hurst as witnesses.

Inspector Robert Johnsen

Johnsen has been an inspector for approximately two years and has been assigned as the Counterterrorism Coordinator for Patrol Borough Queens South (PBQS) for approximately 11 months. Johnsen was the commanding officer of the 60 Precinct for the five years prior to his assignment at PBQS. While assigned as the commanding officer of the 60 Precinct, Johnsen's duties included supervising the overall operations of the command, instituting strategies to reduce crime, and interacting with the community. Johnsen characterized his duties as doing "whatever it takes to make sure it's a successful command." During his time at the 60 Precinct, Johnsen had occasion to work five Coney Island Summer Details. Johnsen explained that the Coney Island Summer Detail (hereinafter, summer detail) is a unit comprised of approximately one lieutenant, six sergeants, and upwards of 50 police officers who are temporarily transferred to the 60 Precinct for approximately 12 weeks during the summer months. The specific purpose of the summer detail is to provide police services for events in the vicinity of the Coney Island beach and amusement area.

Johnsen acknowledged that he met individually with each member of the service transferred to the 60 Precinct for the summer detail. Johnsen became acquainted with the Respondent during June of 2009, when the Respondent was assigned to the summer detail. Johnsen acknowledged that he did meet personally with the Respondent. He described the first meeting with the Respondent as an introductory meeting to first introduce himself to the Respondent, and to inform her of the required duties pertaining to the assignment. During this introductory meeting, Johnsen informed the Respondent that she would be the 6:00 p.m. to 2:00 a.m. platoon commander for the summer detail.

As a courtesy, Johnsen offered the Respondent the opportunity to work the third platoon for a few days in order to "settle in" before taking over the "6 x 2" detail. Johnsen explained to the Respondent that there was already a lieutenant assigned to the 10:00 a.m. to 6:00 p.m. detail. Johnsen testified that it was his practice to space out lieutenants on different tours. He explained that the 6 x 2 detail had the responsibility of assisting with the closing of Coney Island and the amusement park, especially on the weekends. Johnsen communicated to the Respondent that the amusement area would remain open later into the night on weekends and on holidays, and that the Respondent would account for all the personnel assigned to the detail.

Johnsen stated that there came a time during the 2009 summer detail when he observed the Respondent present at the precinct prior to the start of the tour that the Respondent had been directed to work. Johnsen observed on occasion that Samuels was present at the precinct prior to the 1730 start of her directed 6 x 2 tour. Johnsen recalled confronting the Respondent and asking her why she was present at the precinct prior to the start of her tour.

Johnsen recalled telling the Respondent that she would be the 6 x 2 lieutenant on the Sunday after the Mermaid Day Parade. Approximately two weeks later, in the middle of July, he observed the Respondent present at work earlier than the directed tour. According to Johnsen, the Respondent stated that she was present to address some people about their activity. Johnsen said that it was his understanding that the Respondent's early appearance was an exception to the Respondent's regular performance. He believed this because the Respondent was told to perform a 6 x 2 tour that started at 1730 hours when she had first arrived for the summer detail. In addition to being told upon her

arrival at the command that she would be working the 6 x 2 tour, the Respondent was again informed of her tour by Johnsen on the Sunday following the Mermaid Day Parade. Johnsen recalled being upset on the Saturday of the Mermaid Day Parade Detail because that is a major event and the detail would extend into the night. Further, Johnsen did not observe the Respondent in the field. Johnsen would have liked the Respondent to remain in the field after the Mermaid Day Parade Detail was dismissed, but instead, Johnsen discovered that the Respondent was still in the station house. Johnsen had a meeting with Captain William Taylor, the executive officer of the 60 Precinct, during which Johnsen told Taylor that the Respondent would be specifically addressed on the Sunday after the Mermaid Day Parade. Johnsen said he spoke to the Respondent about her tours as he had discussed with Taylor. Johnsen also explained to the Respondent that her duties were in the field and not in the station house. Johnsen considered it a direct order on both occasions when he directed the Respondent to commence her tour at 1730 hours.

Johnsen conceded that he never checked with the Roll Call office to make sure that the roll call was in sync with his orders because he gave the order to the Respondent and expected the Respondent would take care of the matter on her own. Johnsen acknowledged that he was a little distracted at that time while preparing the command for "summer mode" and while working on his "violence plan." Johnsen noted that there were two occasions when the Respondent was ordered to start her tour at 1730 hours and the Respondent neither protested the orders nor provided any reason as to why she would be unable to work a 1730 x 0205 tour. According to Johnsen, at no time did the Respondent request permission to work the 4:00 p.m. to 12:00 midnight shift. Johnsen testified that the Respondent did not have authorization to work the 4 x 12 shift with the

exception of the first week that the Respondent was assigned to the 60 Precinct.

Johnsen testified that during the summer of 2009, he was waiting for neither a promotion nor a transfer. Johnsen stated that he was already promoted by the summer of 2009. Johnsen denied that during the summer of 2009, he was awaiting a transfer to the counterterrorism unit where he is currently assigned. Johnsen admitted that he was actually hoping to complete another summer as the commanding officer of the 60 Precinct. Johnsen acknowledged that a transfer to another assignment cannot be rejected. Johnsen would speak informally to anybody within the Department who would listen to him with regards to his desire to remain at the 60 Precinct. The borough commander and borough adjutant were two people who were aware of his desire to remain at the 60 Precinct.

Johnsen confirmed his familiarity with 60 Precinct roll call records dated June 4, 2009, through June 29, 2009 [Respondent's Exhibit (RX) A]. After reviewing these documents, Johnsen acknowledged that the Respondent was listed on the front page of each roll call, and that the roll calls reflected a 1600 start of tour time for the Respondent. Johnsen confirmed that he previously testified that the Respondent was only allowed to start her tour at 1600 hours on two days. Johnsen confirmed his familiarity with the 60 Precinct command roster dated June 15, 2009, (RX B). After reviewing the roster, Johnsen testified that, although the Respondent was listed on the roster, it does not indicate a start time for her. According to Johnsen, the roster only indicated "evening tour" next to the Respondent's name. After drawing his attention to the upper right hand side of the command roster, Johnsen agreed that the roster listed lieutenants as working 0930 x 1815, and 1600 x 0045. Johnsen reaffirmed that this was the official and accurate

roster.

Johnsen stated that the Respondent did not have a tour indicated next to her name but rather the words "evening tour." Johnsen agreed that the Respondent worked evenings and that 1600 is in the night. Johnsen explained that on June 15, 2009, the Respondent's tour was 1600 x 0045 as a courtesy due to the fact that the Respondent was newly assigned to the 60 Precinct and needed a period of time to "settle in" to the new command. With regards to a section labeled "evening detail," which was located in the middle of the summer detail roster, Johnsen agreed that there was a list beneath the Respondent's name which listed police officers assigned to perform 1600 x 0035 tours.

Johnsen agreed that he had a number of conversations with the Respondent regarding the 1730 start of tour. Johnsen testified that the Respondent was officially notified to start work at 1730 hours by verbal notification only. Johnsen admitted that there was no written notification instructing the Respondent to start her tour at 1730 hours. Johnsen indicated that, with the exception of an acclimation period of a few days, the summer detail did not have assigned tours commencing at 1600 hours. Johnsen conceded that the roll calls for the summer detail (RX A) did reflect a 1600 tour in the summer detail. Johnsen testified that these roll calls were inaccurate with regard to the Respondent. Johnsen acknowledged that the roll call indicated a 1600 start time. After further review of the roll calls, Johnsen testified that the summer detail had been split after June 25, 2009. The split resulted in some members of the detail starting their tours at 1600 hours and some starting at 1735 hours. Johnsen agreed that the roll calls during a period of time encompassing June 5, 2009, through June 24, 2009, reflected a 1600 start of tour for both the Respondent and the summer detail.

Johnsen reaffirmed that there were two lieutenants assigned to the summer detail. Johnsen testified that Lieutenant Anderson was assigned to "days" and specified Anderson's tour as being 1000 x 1800. Johnsen agreed that the Respondent was assigned to "evenings" and specified the Respondent's tour as being 1800 x 0200. Johnsen agreed that Anderson's regular days off (RDOs) were Sunday and Monday. Johnsen affirmed that the 60 Precinct roll calls (RX A) and command roster (RX B) were documents that were produced by the 60 Precinct. Although Johnsen disagreed with some of the information contained within the documents, he agreed that the documents were accurate and unaltered.

Johnsen agreed that the rank of lieutenant is a supervisory position and that part of a lieutenant's responsibilities would be to supervise the men and women under the lieutenant's authority at their respective locations of assignment and while on patrol. Johnsen reaffirmed that the Respondent was the evening supervisor for the summer detail. Johnsen explained that it is a common courtesy to allow persons newly assigned to the 60 Precinct to start their tours at 1600 hours and to eventually adjust those tours to start at 1730 hours as the weather warms. Johnsen denied giving the Respondent only two days to acclimate to the 60 Precinct. Johnsen clarified that the Respondent was given an introduction to the 60 Precinct as needed and the Respondent would adjust to the 1730 tour after a week or two.

After reviewing the memorandum which requested that charges and specifications be preferred upon the Respondent regarding this case, Johnsen testified that when the Respondent started on June 4, 2009, the Respondent was directed to perform tours commencing at 1730 hours. Johnsen stated that the Respondent "was directed to perform

1730 by 0200 with the option in the beginning that she could start at 1600 hours.”

Although he was unable to recall the specific date when the Respondent was removed from the precinct and escorted to the hospital, Johnsen did acknowledge that he was familiar with the event. Johnsen recalled preparing neither an Unusual Occurrence Report nor a Line of Duty Injury Report regarding the Respondent being removed to the hospital. Johnsen testified that he signed off on the Line of Duty Injury Report that was prepared for the Respondent (RX C). Johnsen testified that he signed the Line of Duty Injury Report on October 15, 2009.

After reviewing a packet containing various documents that were prepared to record the Respondent’s removal from the precinct to the hospital, Johnsen acknowledged that he was unfamiliar with the first page of the packet. Johnsen identified the second page as the aided card, and acknowledged that he did not sign the aided card. Johnsen identified the third page as the coversheet of the Line of Duty Injury Report which was prepared on September 17, 2009, and which Johnsen signed on October 15, 2009. Johnsen explained that the Line of Duty Injury Report would have been prepared by the Respondent unless she was unable to complete the paperwork. In the event that the Respondent was unable to prepare it, someone else would have prepared the report for her. Johnsen did not have occasion to review the report prior to the day he signed it. Johnsen recalled that the Respondent’s Line of Duty Injury Report was submitted to him on October 15, 2009. Johnsen recalled becoming aware that the Respondent had shortness of breath on the date in question. Johnsen indicated that the tour listed on the report was a 1600 tour. Johnsen admitted that he reviews documents for their accuracy before signing such documents.

Johnsen acknowledged that he was aware that the Respondent made a complaint alleging that she was threatened by Police Officer Robert Cohen. Johnsen admitted to handling the allegation. Johnsen vaguely recalled that Cohen threatened the Respondent. Johnsen recalled taking disciplinary action against Cohen and ultimately had Cohen transferred back to his permanent command. Johnsen clarified that Cohen was assigned to the summer detail. Although Johnsen did not discipline Cohen with the issuance of a Command Discipline (CD), Johnsen indicated the allegation was under investigation by Patrol Borough Brooklyn South (PBBS). Johnsen suggested to his borough command that Cohen be transferred, and the borough acted upon his recommendation. Johnsen had the authority to discipline Cohen while Cohen was assigned to the 60 Precinct. Johnsen disciplined Cohen by having Cohen transferred, and the incident was referred to the PBBS Investigations Unit (PBBS-IU) for further investigation. Although Johnsen was unaware of any actions taken by PBBS-IU against Cohen, Johnsen did indicate that substantiated allegations could result in Cohen being issued either a CD or charges and specifications. Johnsen did not recall ever giving a statement at an official Department interview regarding the investigation of Cohen's alleged threats towards the Respondent.

Johnsen acknowledged that although he was not present when the Respondent reported sick on the night of September 17, 2009, he did become aware of the incident that same night. He did not recall whether or not he called the Sick Desk to accuse the Respondent of malingering after becoming aware that the Respondent had reported sick.

Johnsen affirmed that he knew that he was going to testify in the Respondent's case. He did not review any documentation prior to giving his testimony in this matter.

In addition, Johnsen acknowledged that he did not have a copy of his "49."<sup>1</sup> Johnsen reaffirmed that he spoke with the Respondent on several occasions regarding the Respondent's assigned tour. He spoke with the Respondent when she was at the orientation when she first arrived at the 60 Precinct, and then again on the Sunday after the Mermaid Day Parade. Although Johnsen could not provide any documentation to substantiate his conversations with the Respondent, he believed the conversations took place in the presence of other people. He admitted that he met with the Assistant Department Advocate for the first time five minutes prior to entering the courtroom to provide this testimony.

Johnsen admitted that he was aware that some of the specifications in this case were related to overtime slips. He acknowledged that he had been the subject of an investigation for not giving overtime and that he was questioned in an official Department interview regarding that. The interview was conducted by the Internal Affairs Bureau (IAB) during the early part of 2010. It was Johnsen's belief that the Respondent initiated the complaint.

After a review of 30 overtime slips prepared by the Respondent (RX D), Johnsen affirmed that he recognized the overtime slips. Johnsen acknowledged that there was a supervisor's approval on every overtime slip. Johnsen explained that every overtime slip was signed by an officer with the authority to sign such slips. However, he asserted that merely documented that the slips were submitted. Johnsen asserted that signing the overtime slip is not an authorization of overtime, but rather it confirms the fact that the slip was received, recorded, and forwarded appropriately. Johnsen agreed that there is a space on the back of each overtime slip for the commanding officer's signature. The

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<sup>1</sup> Department memorandum

commanding officer's signature serves as an approval for the overtime requested by the submitting member. Johnsen indicated that every overtime slip was signed where it says commanding officer's approval.

After testifying that he did not sign any of the overtime slips, Johnsen agreed that he has occasion to delegate certain responsibilities to other members of the service under his command. Johnsen affirmed that one of the responsibilities that he delegates is the approval of overtime slips. Johnsen explained that he delegates an officer to sign and authorize the overtime slips with the knowledge that anything can be reviewed at a later date. Johnsen noted that all records are subject to review at a later date. Johnsen conceded that it does not specifically state on the overtime slip that the slip is subject to review at a later date, however he asserted, all records are subject to review at a later date. Johnsen agreed that the overtime slips were signed, accepted, and authorized. Johnsen stated that there was no problem with the overtime slips until he became aware of this issue. Johnsen could not recall exactly when he discovered an issue with the overtime slips.

Johnsen testified that he was unaware of any complaints made by the Respondent to IAB in August of 2009 and he was not aware of any complaint made against him. Johnsen further stated that he was only made aware of any allegations pertaining to the distribution of overtime, as well as the incident that had transpired with Cohen, on the day he was interviewed regarding such matters. Johnsen indicated that prior to his official Department interview with IAB in early 2010, he had been unaware that the Respondent had reached out to anyone at One Police Plaza to make a complaint to IAB. Johnsen further acknowledged that he was the subject of an official Department interview

conducted by IAB in early 2010 and, although he was not specifically told that the complaint was made by the Respondent, he did surmise that the complaint originated with the Respondent. Johnsen first became aware of an IAB investigation regarding overtime within his command when he was notified to report to IAB for an official Department interview.

Johnsen recalled that the official Department interview was basically about overtime and the way in which Johnsen disseminated overtime. Johnsen did not recall being questioned about an incident during which the Respondent was threatened by Cohen. Johnsen admitted that although he is ultimately in charge of all overtime, he allows the executive officer, Taylor, and the operations coordinator to distribute the overtime. Johnsen noted that there was a change in the operations coordinator position during the summer of 2009. Lieutenant Dechen began the summer as the operations coordinator, and Lieutenant Stapleton ended the summer as the operations coordinator. Johnsen agreed that, ultimately, it was his responsibility to see that overtime was distributed fairly. Johnsen conceded that he was unaware that the Respondent received 55 hours of overtime and that Anderson received 125 hours of overtime. In addition, Johnsen was unaware if the Respondent worked either any extended tours or RDOs.

Johnsen was at home when he received notification that the Respondent had reported sick. Johnsen recalled conducting some type of follow-up the day after he was notified that the Respondent went sick. Johnsen believed that he may have spoken with a Department surgeon, but he did not recall the name of the person with whom he spoke. According to Johnsen, the substance of the conversation related to the Respondent's well being and whether or not the Respondent could return to work. Johnsen indicated that

one cannot push the doctors to return somebody to work.

Johnsen did not recall speaking to the Respondent on July 10, 2009, regarding her start time. Johnsen acknowledged that Taylor has the authority to change the RDOs of members of the service that report to him. Johnsen affirmed that the platoon the Respondent was assigned to supervise was split so that some assigned members started at 1600 hours and some assigned members started at 1730 hours. Johnsen explained that the 10 x 6 lieutenant would take care of the 1600 start and the Respondent would be responsible for the activity generated by the members starting at 1600 hours. Johnsen further explained that the Respondent would be responsible for the members starting at 1600 hours when they were on post, but indicated that the 10 x 6 lieutenant would share in the responsibility. Johnsen indicated that the Respondent had a responsibility to supervise. Johnsen further stated that the Respondent clearly had a responsibility to supervise the members starting at 1730 hours as well as the members working during the third platoon. Johnsen expected the Respondent to respond to any incidents that occurred during her shift and involved members under her supervision.

Johnsen recalled having a conversation with the Respondent on the day after the Mermaid Day Parade. During the conversation, Johnsen told the Respondent that she needed to step it up with regard to the supervising and covering of the members of the service for whom she was responsible. Johnsen indicated that he specifically wanted the Respondent to step up her activity. Johnsen told the Respondent that she was a field supervisor, and her tour was 1730 x 0200 hours. Johnsen was unaware whether or not all members of the summer detail received notifications when there was a split on June 25, 2009. Johnsen was unaware whether or not the Respondent received a notification.

Johnsen explained that on June 21, 2009, he once more directed the Respondent to perform a tour of 1730 x 0205. Johnsen clarified that he directed the Respondent regarding her assigned tour once again because he was referencing that this conversation was a repeat of an earlier conversation with the Respondent.

Johnsen agreed that the investigation into this matter did not begin until September of 2009. Johnsen indicated that the investigation was self-initiated by the 60 Precinct while he was the commanding officer and, as such, he initiated the investigation. Johnsen was not exactly certain when the investigation was initiated but he believed it was approximately two days after the Respondent reported sick, which he believed was on September 15, 2009.<sup>2</sup> Johnsen was not absolutely positive that the investigation was initiated after the Respondent reported sick. It is Johnsen's best recollection that he was not looking into the Respondent's records prior to her sick incident.

Johnsen acknowledged that he preferred the charges and specifications. Johnsen explained that when the overtime slips came before him for review, he did not authorize them, although they were already signed. Johnsen conceded that, in hindsight, it is fair to say that the members of the service who did sign off on the overtime slips did improperly approve the overtime. Johnsen further clarified that the members of the service did not approve the overtime, but rather verified that the overtime slips were submitted, and were accurate. Johnsen stated that there was no disciplinary action taken against the members of the service who signed the Respondent's overtime slips.

Johnsen testified that he knew that the Respondent went to the hospital on September 17, 2009, but that he was unaware if the Respondent was hospitalized. Johnsen reiterated that he was unaware if the Respondent was ever admitted to the

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<sup>2</sup> The Respondent went sick on September 17, 2009.

hospital, but acknowledged that he was aware that the Respondent went to the hospital.

Johnsen explained that notifications to family members of a member of the service who has been removed to the hospital are handled on a case to case basis. Johnsen further explained that if a member of the service has been removed to the hospital and is alert, as well as conscious, then that member may make the notification himself or herself in order to relieve the fears experienced by a family member when contacted by the Department.

Johnsen indicated that a notification to a family member of a member of the service who had been removed to the hospital would be made if the injured member was incapable of making such a notification. Johnsen added that a notification would not be made in the event that an injured member expressed the desire that the Department not make a notification.

Johnsen directed Dechen and Sergeant Melchionna to go to the home of the Respondent on the afternoon of September 19, 2009, after attempts to contact the Respondent via telephone yielded negative results. Johnsen knew that the Respondent was on sick report until 2400 hours on September 19, 2009. Johnsen was unaware if the Respondent was labeled chronic sick at the time of the incident and was unaware whether or not the Respondent had ever been labeled chronic sick. At first, an effort was made to contact the Respondent at her residence to inquire about her well being and to make a notification.

After reviewing the 60 Precinct Telephone Message Log for Friday, September 18, 2009, and Saturday, September 19, 2009 (RX E), Johnsen testified that there was a notation at 1500 hours (on September 18, 2009) which indicated that the Respondent would be coming in to work for a 12:00 midnight to 8:00 a.m. tour. Johnsen admitted

that he was unaware of the information contained in the Telephone Message Log when he sent the members of the service to the Respondent's home. Although he was not aware of the information contained in the log, Johnsen indicated that he was aware that the Respondent had called the command. After becoming aware that the Respondent had called the command to return from sick, Johnsen inquired as to what the Respondent had said during the call. Johnsen was informed that the Respondent would be returning to work the following day. Johnsen denied being informed of the information contained within the log at that time. Johnsen interpreted the message to be that the Respondent would return at 1730 hours on September 20, 2009.<sup>3</sup>

Johnsen acknowledged that he preferred charges against the Respondent for being absent without leave (AWOL). Johnsen was unable to recall the exact date on which he preferred the charges. He believed he started the investigation after midnight and made the call to prefer charges during the afternoon of the following day. By saying after midnight, he meant very early on September 20, 2009. He did not recall either date. Johnsen agreed that, at some point, he determined that the Respondent was AWOL. After not having any contact with the Respondent, she was brought to the 60 Precinct station house by the 63 Precinct patrol supervisor sometime around 1200 hours. The Respondent was not handcuffed at that time.

Johnsen did not interview the Respondent when she was brought to the station house nor did anyone else. Johnsen acknowledged that the Respondent was eventually interviewed. He was present when that interview occurred but could not recall who conducted the interview. Johnsen affirmed that there were inquiries made about the

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<sup>3</sup> The message, taken on September 18, 2009, states: "Lt. Samels [sic] will return from sick tomorrow 9-20-09 12 x 8 tour."

Respondent's medical condition because he wanted to make sure the Respondent was okay. Johnsen did not make inquiries as to the whereabouts of the Respondent during the AWOL period because he would have had to immediately commence an official Department interview. Johnsen did not ask any questions of the Respondent.

Johnsen explained that the Respondent was present with representation. The Respondent was asked if she was okay. The Respondent was asked about her whereabouts and if she was on any medication. The Respondent was asked things that were needed to be known. As far as Johnsen was concerned, he was not going to personally make any inquiries because the matter could result in an official Department interview. Johnsen's main concern was that the Respondent was in his presence and was fit for duty. Although Johnsen does not have any medical training, he determined that the Respondent was fit for duty by using common sense standards. Johnsen acknowledged that he was not aware of the medical treatments the Respondent had received at the hospital. Johnsen believed that during his inquiries into the Respondent's whereabouts, somebody at the Sick Desk might have informed him that the Respondent was not on any medication. Johnsen called the Sick Desk to find out when the Respondent was officially removed from sick report and to inquire about any physical limitations. He conceded that, at that time, he was not aware of any doctor advising the Respondent to be out sick from work for a week. Johnsen admitted that, at the time he made observations of the Respondent's condition, he did not know that the Respondent was [REDACTED]

Johnsen indicated that the Respondent was AWOL from midnight until sometime around 0750 hours on September 20, 2009. Johnsen could not clarify if that meant the Respondent was AWOL after midnight on September 20, 2009 or September 21, 2009.

Johnsen did, however, indicate that it would have been after the Respondent was removed from sick report. Johnsen testified that he did not have his records in front of him, and went on to state that he had no records, but could recall if he could review some of the material.

Johnsen denied making a claim to Sergeant Frank Baer of the Medical Division that the Respondent was malingering or telling Baer during a conversation that the Respondent's illness was not legitimate. Johnsen's conversation with Baer had to do with whether or not the Respondent had contacted the Sick Desk.

Johnsen explained that the Respondent's specific tours were 1730 x 0200, but members of the detail are allowed to start at 1600 hours until the amusement park opens late. Johnsen agreed that the roll call might have shown a discrepancy from what he had told the Respondent, but Johnsen thought that the Respondent would correct any discrepancies. According to Johnsen, at no time did the Respondent ever approach him and inform him that there was an error on the roll call, nor did the Respondent approach Johnsen and ask for further clarification.

Johnsen explained that he sent Dechen and Melchionna to the Respondent's residence because they got no answer when they tried to call the Respondent by telephone. The purpose of the telephone call was to make sure the Respondent was okay and to notify the Respondent to report for a midnight to 0800 tour. Johnsen believed that the Respondent did not know that she was to report for work at midnight because when the Respondent called the desk and spoke to either a sergeant or a police officer, the Respondent indicated that she would see him the next day. Johnsen agreed that assuming the call took place on September 19, 2009, the next day would have been September 20,

2009. Johnsen explained that he didn't have clarity as to whether the Respondent meant she would report for the midnight tour or her regular tour of 1730 hours. Johnsen initiated the phone calls as a result of the confusion.

Johnsen called labor relations to verify if members returning from sick on the first platoon had to report for their next scheduled tour and he was informed in the affirmative. There was a conflict because the Respondent's tour was scheduled to start at 2300 hours, but the Respondent would be required to work the midnight tour because the Respondent was put back to duty effective 2400 hours. After multiple attempts to reach the Respondent by telephone had gone unanswered, Johnsen checked the Respondent's Force Record and noted that the Respondent's residence was in close proximity to the 60 Precinct. Johnsen then dispatched Dechen and Melchionna to the Respondent's residence. Johnsen did not want to see the Respondent get into trouble so he wanted to notify the Respondent that she was changed to the midnight platoon and was due in at work that night. Johnsen acknowledged that if the Respondent did not report that night, then the Respondent would be AWOL.

Johnsen did not follow up at any point to see if the Respondent was correct in her start time after the June conversation. Johnsen explained that he did not follow up because the Respondent is a lieutenant and he expected the Respondent, as a lieutenant, to follow his direct order. According to Johnsen, if the Respondent did not think that the orders were clear enough, then the Respondent should have requested Johnsen to clarify any discrepancy on the roll call. Johnsen also expected the Respondent to take care of any discrepancy by going to time and records for clarification.

Sergeant Frank Baer

Sergeant Frank Baer has been employed by the Department for 15 years. Baer has been assigned as an investigator at the Absence Control Unit of the Medical Division for two-and-a-half years. Baer investigates cases such as malingering and members who work other jobs while on sick report. Between June of 2009 and September of 2009, Baer was primarily assigned as an investigator in the Absence Control Unit, but would fill in at the Sick Desk when necessary. Prior to being assigned to the Absence Control Unit, Baer was assigned to the Mounted Unit and to Police Service Area 9.

As part of his duties, Baer is required to man the Sick Desk on occasion. Baer acknowledged that he was working a 1500 x 2335 tour on Saturday, September 19, 2009, and was assigned to supervise the Sick Desk. According to Baer, it is not normal for him to supervise the Sick Desk because his primary assignment is as an investigator for the Absence Control Unit. Baer, however, fills in when the Sick Desk is in need of a supervisor. Baer affirmed that he had occasion to speak with the Respondent during that tour. To the best of his knowledge, Baer never had an interaction with the Respondent before that date.

Baer was advised by a member of the 60 Precinct that there was a lieutenant [Dechen] and a sergeant [Melchionna] from the Respondent's command present at the Respondent's residence. Baer was asked to call the Respondent and to inform her that there was a lieutenant and a sergeant present in front of her residence and that they needed to speak with her. Baer made the phone call and spoke to the Respondent, informing her that there was a sergeant and a lieutenant from her command outside of her residence and they wished to speak to her. According to Baer, the Respondent was under

the impression that she only needed to speak to either a member from the Medical Division or the district surgeon. Baer informed the Respondent that this was not the case. The Respondent indicated to Baer that she was going to go outside and that was the end of the conversation. Baer did not speak with the Respondent again on that date.

Baer affirmed that the Respondent's words were making sense when he spoke to her on the phone. According to Baer, the Respondent was responsive to the questions that were asked of her. Baer did not note any long periods of delay between his questions and the Respondent's answers. Baer explained that he told the Respondent that she had to open the door because there was a lieutenant and a sergeant from her command there and they needed to give her some information regarding her duties at her command.

After speaking to the Respondent, Baer called Dechen, who was at the Respondent's residence, and informed him that he had spoken with the Respondent and that the Respondent stated she would go outside to speak with him. Baer acknowledged that he did not have occasion to meet the Respondent both prior to and after his telephone conversation with her. Baer has never been assigned to the 60 Precinct. Based upon his experience in the Absence Control Unit, Baer noted that it is actually common practice for a member of the service from another unit to conduct a check while someone is on sick report. Although he could not recall the exact time of the phone call, Baer estimated that the call was made at approximately 2100 hours.

Baer indicated that he received two phone calls from Johnsen on that date related to the Respondent. Baer was also informed that Johnsen had called the Medical Division prior to Baer starting his tour. It was Baer's belief that Johnsen called to have the Respondent returned to duty on that day. Baer explained that the Respondent was

assigned to work the midnight shift which would actually begin before midnight, and the district surgeon had returned the Respondent to duty at [exactly] 2400 hours. Baer was under the impression that Johnsen was inquiring as to the possibility of returning the Respondent from sick so she could make it to work for the beginning of her tour. Although Baer could not recall if Johnsen directly accused the Respondent of malingering during their two phone conversations, Baer did believe that Johnsen's impression was that the Respondent was malingering.

Baer believed that Johnsen had called the Medical Division and spoke to somebody before he got on duty. Baer clarified that he believed that somebody had called during the day tour regarding this matter, but he did not know for certain if that person was Johnsen. After reviewing an excerpt from a transcript of his statements made during an official Department interview, Baer reiterated that he could not say for sure that Johnsen called the Medical Division during the day tour because somebody else may have called on Johnsen's behalf.

Baer recalled that somebody called on the day tour to see if the Respondent could be returned to duty for the beginning of her next shift. Baer received a call from Johnsen at the start of his shift. According to Baer, Johnsen called him because the Respondent was to return to duty at 2400 hours, which was after the start of her next tour, and he wanted to know if he could do anything to have her returned prior to the start of her tour so that she could work the entire shift. Baer informed Johnsen that the district surgeon assigned to work that weekend had gone for the day and that there was nothing he could do to change the return-from-sick time. Baer would not say that Johnsen was insistent to have the Respondent returned for the start of her tour. Baer guessed that Johnsen was

trying to obtain information regarding the procedure of returning somebody from sick.

Baer testified that, while handling this incident and at the time of his testimony, he had no knowledge of the Respondent having any sick abuse problems. Baer explained that he would not have any knowledge of whether or not the Respondent had a sick abuse problem unless he was instructed to conduct an investigation.

Baer stated that, in his experience, he has dealt with members of the service who had histories of sick abuse, and with those who have not. Baer indicated that he spoke directly to the Respondent and informed the Respondent that she needed to go outside and speak with the lieutenant and sergeant from her command. After hearing a recorded telephone message, Baer acknowledged that the recording was of a message that he left for the Respondent (RX N). Baer admitted that he was not aware of when the Respondent actually received the recorded message. Baer noted that he had spoken to the Respondent on the phone prior to leaving the message. Baer indicated that he did not testify to the fact that he left a message for the Respondent because he was never specifically asked if he had left a message. Baer indicated that although the Respondent did not speak to Dechen, Dechen knew that the Respondent was home. Baer did not recall his exact conversation with the Respondent, but recalled that he informed the Respondent that there was a lieutenant and a sergeant outside of her residence and that she needed to speak with them. Baer admitted that he was not familiar with Patrol Guide 203-03, which was amended August 4, 2010.

Baer explained that he received a call from Johnsen after completing a few hours of his tour. During that phone call, Johnsen informed Baer that either Johnsen, or someone acting on behalf of Johnsen, had spoken to the day tour Sick Desk supervisor

and they wanted the Respondent to be returned from sick, but the Respondent was returned after the start of her next tour. Baer was asked by Johnsen if there was any way to have the Respondent returned from sick earlier so that she could begin her tour. Baer informed Johnsen that there was nothing that could be done because the surgeon had left for the day, and the Respondent was returned from sick report as of midnight. Baer explained that the Respondent could start at midnight, but that could be a couple of hours into her tour.

According to Baer, Johnsen called him back a few hours later to say that they were trying to reach the Respondent for a period of time. Johnsen informed Baer that, after not being able to reach the Respondent, a lieutenant and a sergeant from the 60 Precinct were present at the Respondent's residence and the Respondent would not come to the door. Baer testified that he offered to call the Respondent because she might answer the phone if she saw the Sick Desk number on her "caller I.D." Baer indicated that the Respondent did answer his phone call. During Baer's conversation with the Respondent, Baer informed her that she needed to go outside and speak with the lieutenant and the sergeant. The Respondent told Baer that she would go outside.

After ending the call with the Respondent, Baer called Dechen and informed Dechen that the Respondent would be coming outside to speak with him. Dechen then informed Baer that the Respondent stuck her head out of the doorway, waved, and closed the door. Baer stated that he then called the Respondent to see if he could talk to her again but his call went unanswered. Baer left a recorded message, but his call was never returned.

Captain William Taylor

Taylor has been assigned as the executive officer of the 70 Precinct for two months. Taylor was assigned as the executive officer of the 60 Precinct during the 20 months prior to his current assignment. While assigned to the 60 Precinct, Taylor held the rank of captain and was second in command, answering only to the commanding officer. During his assignment to the 60 Precinct, Taylor worked for two commanding officers. He first worked under Johnsen, who was replaced in January of 2010 by Deputy Inspector Peter Deblasio. Taylor explained that he was responsible for supervising every member of the command with the exception of the commanding officer.

Taylor agreed that he is familiar with the summer detail. He explained that the purpose of the summer detail is to ensure the safety and well being of all people attending the beach, boardwalk, and amusement area. According to Taylor, the summer detail runs from the middle of June until approximately the second week of September. Taylor indicated that he experienced two summer details, the first in 2009 and the second in 2010. Taylor explained that the precinct was totally different in the summertime when compared to the rest of the year. Taylor estimated the between two and three million people come to the beach, boardwalk and amusement area. Taylor explained that the day tour portion of the summer detail would historically address a grand larceny condition. Many people who attend the beach leave their valuables unattended while they go into the water, and they then return from the water to discover that somebody has stolen their property. According to Taylor, the night tour portion of the summer detail addresses quality-of-life conditions. Many people come to the area and become intoxicated, act rowdy, and get into fights. Taylor stated that, depending on the day of week, the quality-

of-life conditions could extend well into the middle of the night.

Taylor testified that half of the personnel assigned to the summer detail are temporarily assigned from other commands. According to Taylor, the summer detail is comprised of two lieutenants, three or four sergeants, and approximately 40 police officers. Taylor specified that one of the lieutenants was assigned to the daytime portion of the detail, and one lieutenant was assigned to the nighttime portion of the detail. For the most part, the day tour portion of the summer detail consists of 60 Precinct personnel, and the nighttime portion is covered by personnel that have been temporarily assigned to the detail from other precincts.

He did not recall the exact date on which the 2009 summer detail began but guessed that the detail started sometime in the middle of June or within a few days of June 15, 2009. Taylor indicated that he was not present at the beginning of the summer detail in 2009 because he was on his honeymoon in Alaska. Taylor indicated that he did not have occasion to meet the Respondent prior to the summer detail in June of 2009. Taylor first met the Respondent on his first day back from vacation. He did not recall anything out of the ordinary with regards to the first time he met the Respondent and indicated that they introduced themselves to each other. Taylor believed that the Respondent may have already been working in the 60 Precinct as part of the summer detail for a limited time prior to their introduction.

Taylor did not recall the exact tours performed by the summer detail in 2009, but explained the day tour worked approximately 1000 x 1800. Taylor further explained that approximately 40 percent of the nighttime portion of the detail worked 1500 x 2335 and the remaining 60 percent worked 1730 x 0205. Taylor indicated that only one lieutenant

was assigned to work the nighttime portion of the detail.

Taylor testified that he had a discussion with the Respondent early in the summer which concerned her assigned tour. He could not recall the exact date of the conversation, but recalled that Johnsen had seen the Respondent in the vicinity of the desk at approximately 1600 hours. Taylor stated that Johnsen informed him that the Respondent had been instructed to work 1730 x 0215 tours. Taylor testified that Johnsen told him to inform the Respondent that the inspector wanted her to be there later in the night and to start her tour at 1730 hours and work until 0215 hours.

Taylor recalled that the Respondent's contention was that she remembered the inspector telling her about the tours, but the Respondent indicated to Taylor that she came in to address roll call for the portion of the detail that started at 1500 hours regarding their poor activity. Taylor agreed that by addressing the portion of the detail that started their tour at 1500 hours, the Respondent was in fact also addressing the members of the service who are assigned to work the night tour. Taylor clarified that the members assigned to the nighttime portion of the detail either worked 1500 x 2335 or 1730 x 0205. According to Taylor, the Respondent was assigned to supervise both the members of the detail who started their tours at 1500, and those who started their tours at 1730.

Taylor testified that he informed Johnsen of the Respondent's concerns regarding the activity generated by some of the members who started their tour at 1500 hours. Taylor also indicated that he told Johnsen that the Respondent was present at work early to address the roll call at 1500 hours regarding her concerns. Taylor stated that Johnsen instructed him to inform the Respondent that she was not needed to be present until the later tour because the day tour lieutenant was present until 1800 hours. According to

Taylor, Johnsen also stated that the Respondent could address the members who started at 1500 hours while they were in the field or she could conduct their return roll call.

Taylor agreed that he would classify his direction that the Respondent perform tours commencing at 1730 hours and ending at 0200 hours as an order. Taylor conceded that he never checked with Roll Call personnel to verify that the Respondent complied with the order. Taylor admitted that he would check in the future, but, at the time, he felt no need to check with Roll Call because he had an expectation that an order issued to a lieutenant by a captain would be followed. Taylor stated, “[the Respondent] was supposed to start at 1730, that was what time she should have started from that day forward regardless of what the roll call says.”

Taylor indicated that he has been with the Department for 16 years, and first became a supervisor in June of 2000. Taylor agreed that he has had occasion to discuss the issues of scheduling and tours with members under his supervision during his more than ten years experience as a supervisor. According to Taylor, if a supervisor directs or orders a change to a member’s assigned tour, then it neither would matter nor be an excuse that the Roll Call personnel had not changed the paperwork to reflect such an order. Taylor explained that the supervisor would line out and initial the information to be changed, and then make a handwritten change on the roll call. Taylor asserted that the order would not be invalidated if the change was never made on the roll call.

Taylor indicated that there was another occasion during the summer of 2009 when he spoke to the Respondent about assigned tours. Taylor believed that he had a second discussion with the Respondent concerning her tours a few weeks after their initial conversation on the topic. Taylor testified that he was informed by Johnsen that the

Respondent was observed in the vicinity of the desk at approximately 1600 hours. Taylor claimed he confronted the Respondent and he instructed the Respondent that she should start her tour at 1730 hours effective immediately. Taylor also instructed the Respondent to address the members who started their tour at 1500 hours only after she started her tour at 1730 hours.

Taylor recalled that he had a discussion with the Respondent regarding the Respondent's vacation selections in either late August or early September. He outlined this discussion in a Department memorandum dated September 18, 2009 and addressed to the Adjutant of PBBS (DX 3). Taylor explained that the Respondent had Sunday and Monday RDOs while assigned to the 67 Precinct. During her assignment to the summer detail, the Respondent had Tuesday and Wednesday RDOs.

According to Taylor, the Respondent told him that she had a timeshare which required her to leave on a certain date. Taylor stated that he sat down with her so that they could discuss the situation and come up with a solution. Taylor and the Respondent used a calendar to aid in the understanding of the switches that were to be made as part of the solution to the Respondent's vacation problem. He acknowledged that a copy of the calendar for the month of September 2009 that was used to aid with the creation of a solution to the Respondent vacation issue, bore his markings (DX 1).

Taylor explained that the Respondent told him that prior to her transfer to the summer detail, her RDOs had been Sunday and Monday, and she had a vacation pick which began on Tuesday, September 8, 2009, and ended on Saturday, September 12, 2009. According to her schedule at the time she made her vacation selections, the Respondent would have been excused for a total of nine days which would have

consisted of two RDOs, followed by five vacation days, followed by another two RDOs.

Taylor further explained that the weekend in question was Labor Day weekend and

Taylor stated that he would have liked to have had the Respondent around that weekend.

Taylor went on to say that the Respondent had a timeshare, and he was not going to deny

the Respondent's vacation pick so he adjusted her RDOs.

Taylor testified that under the Respondent's schedule during the summer detail,

the Respondent would have used three vacation days for Saturday, Sunday, and Monday.

The Respondent would have had her RDOs of Tuesday, and Wednesday. The

Respondent would then use two more vacation days for Thursday, and Friday before

returning to work. Taylor noted that the Respondent's schedule during the summer detail

would have required the use of seven vacation days and would have reduced the

Respondent's vacation by two days. He explained the solution was to approve Saturday,

September 5, 2009, as the Respondent's individual vacation day (IVD). The Respondent

would have Sunday, September 6, 2009, and Monday, September 7, 2009, as her RDOs.

The Respondent would submit a Leave of Absence Report for her vacation pick

beginning on Tuesday, September 8, 2009, and ending on Saturday, September 12, 2009.

The Respondent would then take Sunday, September 13, 2009, and Monday, September

14, 2009, as her RDOs rather than Tuesday and Wednesday.

Taylor testified that after making arrangements for the Respondent's vacation, the

Respondent was supposed to return to work on Tuesday, September 15, 2009. Taylor

acknowledged that prior to this arrangement, Tuesday, September 15, 2009, and

Wednesday, September 16, 2009 would have been the Respondent's RDOs. Taylor

explained that these two dates were no longer going to be the Respondent's RDOs

because the Respondent was given RDOs on Sunday, September 13, 2009, and Monday, September 14, 2009, so that the Respondent could have a longer vacation. Taylor clarified that the main issue was with the Respondent having RDOs on Tuesday, September 8, 2009, and Wednesday, September 9, 2009. Taylor noted that without the agreement, the Respondent's vacation pick would have shifted with the RDOs she was assigned during the summer detail, and the Respondent's vacation would have begun on Thursday, September 10, 2009. Taylor also noted that without the agreement, the Respondent would have had to work the entire Labor Day weekend.

Taylor explained that he granted the Respondent an IVD on Saturday, September 5, 2009, and changed the Respondent's RDOs to Sunday, September 6, 2009, and Monday, September 7, 2009, instead of Tuesday, September 8, 2009, and Wednesday, September 9, 2009, so that the Respondent could leave for her trip and have nine days off consisting of five vacation days and four RDOs. Taylor agreed that it was fair to say that he was trying to accommodate the Respondent. Taylor testified that the Respondent asked no questions about the arrangement and seemed to be thankful and appreciative for what had been done regarding her vacation selection. According to Taylor, the Respondent both understood, and was happy with the arrangement that had been worked out.

Taylor testified that he never had a problem with the Respondent. Taylor noted that up until a few days prior to the Respondent being suspended, he would have characterized his relationship with the Respondent as being "fine." Although Taylor was present at work on September 15, 2009, he did not notice that the Respondent was absent on that day. Taylor admitted that he noticed that the Respondent was not present at work

on September 16, 2009, and indicated that he called her that day. After noticing that the Respondent had not reported to work on September 16, 2009, he inquired as to the Respondent's whereabouts with somebody in Roll Call. Taylor was informed that the Respondent had been chart-changed for four consecutive days off Sunday, September 13, 2009, through Wednesday, September 16, 2009. Taylor acknowledged that although those dates were not part of the arrangement he had worked out with the Respondent, he was only looking for the Leave of Absence Reports at that time. Taylor clarified that he figured that the Respondent would appear on September 17, 2009, at which time he would have informed the Respondent that this was not their agreement, and he would have asked the Respondent to submit two Leave of Absence Reports for September 15, 2009, and September 16, 2009.

Taylor explained that an unapproved and unsigned Leave of Absence Report had been submitted to Roll Call by the Respondent, who was requesting the next five days off – Thursday, September 17, 2009, through Monday, September 21, 2009. With regards to the unapproved Leave of Absence Report, Taylor stated “I did not approve it, nobody of equal or higher rank to me approved it, nobody below my rank had signed it.” According to Taylor, he was unaware of the Respondent’s desire to take off September 17, 2009, through September 21, 2009. The first time Taylor became aware of such a request was when the person in Roll Call showed him the Leave of Absence Report.

Taylor testified that after he learned of the unapproved Leave of Absence Report, he called the Respondent’s cell phone number and left a voice mail message during which he directed the Respondent to call him back upon receipt of the message and to report to work the next day. The Respondent returned Taylor’s phone call a few minutes

later. According to Taylor, he asked the Respondent who approved her Leave of Absence Report and she indicated that nobody approved the request. Taylor testified that he responded by saying, "be here today." The Respondent informed him that she was out of town and would not be able to make it in to work. Taylor claimed he then instructed the Respondent to report to work on September 17, 2009, and that a failure to report would result in the Respondent being AWOL.

Taylor was present for work on September 17, 2009, and testified that he observed the Respondent at the precinct that day. Taylor explained that he conferred with Johnsen after his phone conversation with the Respondent. Johnsen and Taylor got in touch with Dechen, who was the integrity control officer (ICO). A review of the Respondent's time records, overtime slips, and Leave of Absence Reports revealed that the Respondent began her tour at either 1500 hours or 1600 hours, instead of 1730 hours, on approximately 25 occasions after being instructed that she was to start at 1730 hours. Taylor conceded that he never thought to check the Command Log to verify at what time the Respondent was signing in for work. Taylor testified that, "there was more than a handful of times that the lieutenant decided on her own, against a direct order, to start whether it be 1500, 1600, et cetera, and then collect overtime on the end."

Taylor met with the Respondent in the presence of a witness, Captain Brian White, on September 17, 2009. Taylor indicated that he wanted a witness to be present so that there could be no allegation or discrepancy as to what was discussed with the Respondent. Taylor testified that, at that point, there was not going to be any discipline or anything regarding the indiscretion with the time. The Respondent was informed that she would be assigned as the first platoon desk officer effective immediately. Taylor

explained that he was not absolutely certain as to the exact tour, but indicated that the tour was eight hours and 45 minutes long and would commence at approximately 2300 hours and end at approximately 0745 hours. Taylor further explained that the rules require that 24 hours-notice be given for the tour change so the Respondent would have started at 1730 hours on September 18, 2009, and then start at around midnight on the September 19. According to Taylor, the first platoon lieutenants start around 2300 hours and the police officers start around 2315 hours. Taylor affirmed that he gave the Respondent orders regarding her tours on September 17, 2009. Taylor testified that he instructed the Respondent by stating to her "that she was going to do a 1730 by 0205 today the 17<sup>th</sup>. She would do another 1730 to 0205 tomorrow the 18<sup>th</sup>, and then she would, effective the 19<sup>th</sup>, become the first platoon desk officer." Taylor clarified that the Respondent would have finished around 0205 hours, and then been on the desk until 0745 hours. The Respondent would then report at 2300 hours as the desk officer on September 20.

Taylor indicated that the summer detail usually ends approximately two weeks after Labor Day, but for some reason the detail ran a little longer in 2009. Taylor testified that on September 17, 2009, he held the belief that the members assigned to the summer detail could be returned to their permanent commands any day. Taylor further explained that he did not believe that the arrangement of the Respondent working a first platoon would last very long.

Taylor admitted that, in the beginning and for the majority of the summer, he did not have any problem with the Respondent. Taylor denied discussing with the Respondent the possibility of staying at the 60 Precinct after the summer detail. Taylor

recalled a conversation that he had with the Respondent after the Respondent had just been scolded by Johnsen for some unknown reason. Taylor claimed that the Respondent approached him and told him that she was a good worker, and that she was upset due to the way she was spoken to by Johnsen. Taylor told the Respondent not to worry, and told the Respondent that he would create a buffer between her and Johnsen. Taylor told the Respondent that she would not have any problems if she did a good job. Taylor recalled that the Respondent was still upset the following day, and he knew that she had an IAB background and he knew that the 67 Precinct was interested in her becoming the ICO. Taylor knew that the ICO was getting ready to be promoted to the rank of captain and soon. Taylor stated to the Respondent, "we are going to be in the market for an ICO, if you do a good job here maybe they will keep you on."

Taylor testified that he did not have any interaction, while off-duty, with the Respondent during the summer of 2009. Taylor admitted that he had occasion to call the Respondent on the phone to give her instructions related to work when he was not present at work. Taylor testified that, despite the fact that he himself had notified the Respondent to report for the first platoon, the Respondent did not report to work on September 20, 2009. According to Taylor, he told the Respondent on September 17, 2009, that she would be working that tour, and at no time after that instruction did the Respondent inform Taylor that she could not work that tour. Taylor explained that while he issued instructions to the Respondent to report for the first platoon on September 17, 2009, the Respondent prepared notes on a sheet of paper regarding the directives.

On cross examination, Taylor testified that he attended the Federal Bureau of Investigation (FBI) Academy in Quantico, Virginia in 2005. Taylor admitted that he was

ultimately kicked out of that training because of excessive drinking, consorting with married women, and making derogatory remarks about the FBI. Taylor agreed that he was not present to give any opening remarks to the summer detail because he was on his honeymoon at the time. Taylor acknowledged that he was assigned to IAB Group 54 when he was a sergeant and he was a sergeant in IAB at the same time the Respondent was assigned to IAB. Taylor was not aware that the Respondent was assigned to Group 32. Taylor vaguely recalled working a serious assault case in a bar in Park Slope while assigned to IAB. Taylor did not recall ever meeting or working with the Respondent.

Taylor acknowledged that he had testified that the summer detail started at 1500 hours. After reviewing the command roster (RX B) Taylor agreed that it indicated that the summer detail started at 1600 hours. Taylor agreed that there came a point in time when the summer detail started at both 1600 hours and 1730 hours. Taylor affirmed that the Respondent was responsible for both the members of the service that started at 1600 hours, and the members of the service that started at 1730 hours.

Taylor estimated that he first met with the night platoon of the summer detail around June 10, 2009. According to Taylor, Johnsen ordered the Respondent to perform a certain tour on June 21, 2009. Taylor testified that he issued an order to the Respondent regarding her tour sometime after June 21, 2009, and estimated that he issued his order approximately ten days after June 21, 2009. There were no witnesses present when he issued the order to the Respondent regarding her tours. Taylor is not aware of any record of a written order regarding the tour change. Taylor did not know if the other lieutenants and sergeants received written notifications for their respective tour changes.

Taylor denied asking the Respondent to be the ICO. Taylor recalled a

conversation he had with the Respondent in the early part of July 2009. During the conversation, Taylor discussed the possibility of the Respondent becoming the ICO, should that position become vacant. Taylor noted that there were no witnesses present for this conversation.

Taylor recalled that he signed the Leave of Absence Reports for the Respondent's September vacation in late August. Taylor recalled that the Respondent approached him with a problem concerning her RDOs and a timeshare. Taylor conceded that he had the conversation with the Respondent and signed her Leave of Absence Report on August 17, 2009, after reviewing a copy of the Leave of Absence Report submitted by the Respondent requesting vacation from 1715 hours on September 5, 2009, through 0200 hours on September 6, 2009 (RX K). Taylor reaffirmed that there were no witnesses present when he spoke to the Respondent about her vacation picks. Taylor initially indicated that the Respondent did not speak to him about any other topic that day, but then acknowledged that the Respondent may have mentioned that she was going back to the 67 Precinct to be the ICO.

Taylor testified that he did not have any problems with the Respondent's performance as of August 17, 2009. Taylor vaguely recalled Johnsen having a problem with the Respondent regarding something other than tours and overtime during the early part of the summer. According to Taylor, the first time he saw a copy of the Respondent's vacation selections was during the month of September when the Respondent had not returned from vacation. Taylor requested the vacation selections from the 67 Precinct. Taylor did not recall telling investigators that he saw the selections in the end of August or the beginning of September.

Taylor affirmed that he saw the charges and specifications that were brought against the Respondent. Taylor knew that he would be called as a witness and that he would have to answer questions relating to the charges and specifications. Taylor acknowledged that he reviewed the Leave of Absence Reports that he signed, the Leave of Absence Reports that were unsigned, other Leave of Absence Reports, and overtime slips. Taylor affirmed that he indicated that the Respondent would receive a schedule "A" CD in his report to the PBBS Adjutant (DX 3). Taylor acknowledged that the Respondent was, in fact, suspended and indicated that Johnsen had made that decision. The Respondent clarified that the report to the PBBS Adjutant was prepared prior to the suspension for unauthorized tour changes.

Taylor testified that he had the Respondent resubmit Leave of Absence Reports for the days that she should have had off rather than the adjustment that they had made. Taylor agreed that on September 17, 2009, he was only looking for Samuels to complete Leave of Absence Reports for September 15, 2009, and September 16, 2009. Taylor agreed that he also had unapproved Leave of Absence Reports that were submitted by the Respondent, and indicated that he would not utilize those Leave of Absence Reports because of the fact that they were not approved.

Taylor testified that he reviewed copies of his desk calendar (DX 1) and acknowledged that he made notations on the original calendar in his own handwriting. Taylor acknowledged that he had indicated "RDO" under Tuesday, September 15, 2009, and Wednesday, September 16, 2009. He affirmed that "C/C" was noted under Sunday, September 13, 2009, and Monday, September 14, 2009. Taylor explained that "RDO" represented regular day off, and "C/C" represented chart change. Taylor also

acknowledged that "RDO" was also noted under Sunday, September 13, 2009, and Monday, September 14, 2009. Taylor acknowledged that the calendar does not reflect accurate information. Taylor stated "this is a calendar that was on my desk at the time I had the conversation with the [Respondent] [in] September '09, [it is a] Police Department calendar." He explained that the markings were made when the Respondent came to his office to express a concern with regard to her vacation pick. Taylor admitted that he made the markings on the calendar while having a discussion with the Respondent about the Respondent's vacation selection. He said that his notation of numerals 1, 2, 3, 4, and 5 corresponded to September 8, 2009 through September 12, 2009. These were dates for which the Respondent was to submit a Leave of Absence Report as part of the agreement. Taylor noted that the Respondent's RDOs were normally Tuesday and Wednesday, and he noted RDO chart changes to Sunday and Monday. According to Taylor, the understanding was that the Respondent would return to work on September 15, 2009. Taylor explained that "RDO" was noted under September 15, 2009, and September 16, 2009 because those days were normally the Respondent's RDOs. Taylor explained that the notations were placed there to figure out what other days the Respondent could have off to accommodate the Respondent's request.

Taylor affirmed that the Respondent was suspended for not being at work on September 20, 2009. Taylor agreed that September 20, 2009, would have been the Respondent's sixth consecutive tour, but in actuality, it wasn't because the Respondent wasn't there on September 15, 2009, and September 16, 2009. Taylor agreed that the Respondent was AWOL on September 15, 2009, and September 16, 2009. Taylor explained that:

This is what [the Respondent] wanted, okay. She had to get somewhere for her timeshare. I gave her Labor Day weekend off. There was no way that I was granting [the Respondent] four consecutive RDOs. Yes, she would have to had worked greater than five days in a row in exchange for the courtesy of giving her off earlier than she was supposed to have off. As it turned out, that wasn't her sixth connsecutive day.

Taylor testified that the Respondent's RDOs would have been September 6, 2009, September 7, 2009, September 13, 2009, and September 14, 2009, in accordance with the Respondent's approved vacation. Taylor affirmed that he did not call the Respondent until September 16, 2009, despite the fact that the Respondent should have been at work on September 15, 2009. Taylor acknowledged that it took over 24 hours for him to call the Respondent, who was a potentially missing member of the service.

Taylor acknowledged that he has had occasion to approve chart changes for the purpose of vacation selections. Taylor recalled that he initially denied a request made by Sergeant Torres regarding her vacation selection, but approved a chart change after finding out that Torres was going on a cruise. Taylor did not recall if he switched RDOs to accommodate Torres. Taylor acknowledged that the 60 Precinct roll call for July 18, 2009, (RX A) listed Torres as having a chart change on the last page. Taylor reaffirmed that he approved the chart change for Torres.

Taylor agreed that the number of RDOs for a member of the service is established by contract. He did not know if a member of the service was contractually prohibited from working in excess of five consecutive days. Taylor indicated that he has been a captain for two years, and acknowledged that he held the rank of lieutenant a year before the incident in question. Taylor testified that he worked in excess of five consecutive days on several occasions when he was a lieutenant, but that he was not sure if that was

authorized by the contract. Taylor did not know if he had the authority to allow the Respondent to work in excess of five consecutive days. Taylor stated, "I should have had her work Labor Day weekend and go on her vacation the following Thursday."

Taylor acknowledged that he was sent for training after being promoted to captain and that during the training he was instructed as to what he was authorized and not authorized to do. Taylor acknowledged that the training was over two years ago and he could not recall being told how many days on or off of work he could grant or could not grant.

According to Taylor, the Respondent was charged with the responsibility of dismissing the night platoon of the summer detail. Taylor reaffirmed that the Respondent was responsible for both those members who started at 1600 hours and those who started at 1730 hours, even after the night platoon of the summer detail was split into two groups. Taylor indicated that there was no captain assigned to the night platoon. Taylor noted that he was the only captain, and he was responsible for both the day tour, and the night tour. Taylor admitted that he had no prior experience in the summer detail, and acknowledged that this was his first summer detail. Taylor recalled that it had rained a lot during the summer of 2009. Taylor explained that the weather had an effect on the amount of people who came to the Coney Island area. Taylor agreed that bad weather generally meant fewer people and consequently a reduced need for police personnel. Taylor acknowledged that there were times when he let the Respondent leave early because she was not specifically needed.

Taylor agreed that he was informed by the Respondent that she was threatened by Cohen. Cohen threatened to spray the Respondent with pepper spray, and the

Respondent suffers from [REDACTED] Taylor agreed that a threat to pepper spray someone who suffers from [REDACTED] is a serious threat. Taylor discussed this threat with Johnsen. Taylor did not know if the words "danger to her life" were used during the discussion, but the incident was mentioned to Johnsen. Taylor believed that Johnsen was aware of the seriousness of the threat because the Respondent suffered from [REDACTED] Taylor explained that Cohen had his firearms removed and was referred for a psychological review. Taylor indicated that Cohen was issued a CD for the inappropriate remarks he made towards a supervisor. According to Taylor, Cohen was returned to his original command. Taylor did not recall Cohen being served with any charges and specifications as a result of the incident. Taylor did not recall whether Cohen was issued a schedule "A" or "B" CD. Taylor did not know if Cohen was penalized with the loss of any days as a result of the CD.

Taylor recalled addressing the Respondent on two separate occasions concerning the tour that the Respondent should be working; however, Taylor could not recall the exact dates of these conversations. Taylor stated:

I can tell you that Inspector Johnsen instructed me because he made a notation on his calendar that he told me that he instructed her on June 21, 2009 that he wanted her to do 1730 by 0215. A period of time after that date, probably not too long after that date, he observed the [Respondent] in the vicinity of the desk at about 1600 and he asked me what she is doing there, she is supposed to start at 1730 as he instructed her. I went out asked her what she was doing. I think she said she wanted to speak to the Roll Call about something. I instructed her that the tour started at 1730 on that date. And then on the second date when I saw her at the desk prior to 1730, the first instruction was not too long after Inspector Johnsen's June 21<sup>st</sup> instruction. The second instruction, I don't recall it being late into the summer, but it could have been.

Taylor indicated that it wasn't until sometime in early September that they realized that the Respondent was starting prior to 1730 hours. Taylor indicated that they assumed that the Respondent was arriving for work at 1730 hours with the exception of the times she was seen at the precinct before 1730 hours.

According to Taylor, the investigation into the Respondent's tour changes and overtime began on Wednesday, September 16, 2009. Taylor affirmed that he changed the Respondent's tour to first platoon on the authority of Johnsen on September 17, 2009. Taylor affirmed that he was aware of the guidelines of the summer detail. Taylor admitted that it was his idea to reassign the Respondent to be the first platoon desk officer but that the reassignment could not have been done without Johnsen's authorization. Taylor also clarified that the Respondent was not on loan to the 60 Precinct, but rather she was temporarily assigned to the 60 Precinct. Taylor agreed that the Respondent would be returned to the 67 Precinct upon the completion of the summer detail. Taylor testified that he was not aware that the Respondent had made a complaint regarding the allocation of overtime.

Taylor had a meeting with the Respondent in the presence of a witness, White, on September 17, 2009. According to Taylor, the Respondent was informed that she would be the first platoon desk officer. Taylor informed the Respondent that what he had uncovered on the day prior to the meeting was, in his opinion, an abuse of overtime. Taylor further indicated that he had received phone calls concerning her tour during the summer and that he did not want to receive such calls. Taylor told the Respondent that she was going to be the first platoon desk officer, and he did not want to receive any phone calls. Taylor advised the Respondent that he was considering bringing this matter

to the district attorney's office, and that she may need a lawyer.

Taylor agreed that as of September 18, 2009, he was still considering a schedule "A" CD as a fitting solution to the incident. According to Taylor, the Respondent reported for work on September 17, 2009, but reported sick after reporting for work on that day. Taylor testified that he spoke to a surgeon from the Medical Division after finding out that the Respondent had reported sick. Taylor stated, "I told him [the district surgeon] that I didn't believe she [the Respondent] was sick and I wanted the district surgeon to give her a fair examination." Taylor acknowledged that he does not have any medical training, but indicated that his lack of medical training is the very reason why he wanted the doctor to examine her. Taylor testified that the desk officer notified the Operations Unit regarding the Respondent's illness. Taylor did not notify anyone in the Respondent's family regarding the Respondent being transported to the hospital.

Taylor affirmed that he called IAB at approximately 0017 hours on September 20, 2009. Taylor also indicated that he was aware, from his prior experience while assigned to IAB, that some of the phone lines are recorded and some are not. Taylor also indicated that the phone line he called at IAB was not a recorded phone line, and that he knew it was not a recorded phone line. Taylor explained:

No, I called that line because the other line was probably busy the first 15 or 20 times that I called it so I called the supervisor's line and the supervisor there put me in touch with the officer that was taking a complaint. It was not in my head at the time, whether the phone call was recorded or not.

Taylor further clarified that it was not a matter of knowing which phone lines were recorded. According to Taylor, when he was unable to get through on a phone line, he would call the supervisor's phone line, and the supervisor would connect him to an

officer that would handled his call. Taylor reviewed the IAB Command Center Call Log which listed his calls (RX H), as well as a copy of his desk calendar from September 2009 (DX 1). After reviewing the documents, Taylor stated that he believed that the call log was not an accurate recitation of the conversation which took place when he called IAB on September 20, 2009, and he stated:

I believe this is inaccurate. The captain stated that put in a UF 28 for 9/15 to 9/17/09, it was denied, there was no 28. Those were her original RDO's and the other thing here is the captain stated that he spoke with her on 09/17/09 it was actually 9/16/09 she was to respond to work 1730 on 09/17 other than that everything looks accurate.

Taylor affirmed that IAB Call Log for September 19, 2009, at approximately 0017 hours, did indicate that the Respondent had not come to work. Taylor explained he obtained that information not by talking to the Respondent, but by talking to Sergeant Todino, the desk officer. Taylor clarified that he spoke to the Respondent on September 17, 2009, and the Respondent knew that she was supposed to report for a midnight tour which would begin on September 19, 2009 and extend into September 20, 2009. Taylor acknowledged that the Respondent had reported sick on September 17, 2009, however the Respondent was returned to full duty at midnight on September 20, 2009.

Taylor testified that he was informed by Johnsen that Johnsen ordered Dechen, and Melchionna to visit the Respondent's home. Taylor believed that a direction was given that hourly visits be made to the Respondent's home until contact was made with the Respondent. Taylor did not have knowledge of the Respondent having a history of sick abuse. According to Taylor, the Respondent did not have a history of sick abuse during her temporary transfer to the 60 Precinct. Taylor conceded that the claim that the Respondent was not going to come to work on September 20, 2009, was not documented

anywhere. After being located on September 20, 2009, the Respondent arrived at the 60 Precinct and Taylor asked her where her firearms, shield, and Department-issued identification card were located. Taylor stated that the Respondent came to the 60 Precinct on September 20, 2009, at approximately 1200 hours; she was neither subjected to an official Department interview, nor questioned by anybody at that time.

Taylor recalled having a conversation with Lieutenant David Hurst of PBBS-IU about the Respondent, after it was noticed that numerous members of the summer detail were on their respective posts well beyond the time that they should have been. Taylor further indicated that he had several discussions with Hurst. Taylor acknowledged that each time he was interviewed by Hurst, he was being interviewed as part of an official Department investigation. Taylor also indicated that Hurst did not record any of his interviews that concerned the allegations against the Respondent.

According to Taylor, the Respondent was not entitled to keep her vacation selections when she was transferred to her temporary assignment at the 60 Precinct. He accepted the Respondent's word regarding the vacation selections that she had made at the 67 Precinct prior to that temporary transfer. He did not request a copy of the Respondent's actual vacation selection from the 67 Precinct until the middle of September 2009. Any conversation that he had with Hurst regarding the Respondent's vacation selections would have taken place in the middle of September. Taylor testified that during any conversation with Hurst regarding the Respondent's vacation selection, he would have simply informed Hurst that the Respondent's vacation selection was to start on Tuesday, September 8, 2009, and end on Saturday, September 12, 2009.

Taylor reaffirmed that the Respondent reported to work on September 17, 2009,

and reported sick while at work on that day. Taylor indicated another inaccuracy contained in the IAB Call Log (RX H) by noting that a date in the log was wrong. According to the call log, Taylor stated that he spoke with the Respondent on September 17, 2009, and advised the Respondent that she was to report for work at 1730 hours on September 17, 2009. Taylor indicated that the conversation with the Respondent actually took place on September 16, 2009. During that conversation, Taylor told the Respondent that she had to report to work at 1730 hours on September 17, 2009. It was during this conversation of September 16, 2009, that Respondent said that she was out of town and would not be at work.

According to Taylor, Dechen and Melchionna were ordered to make copies of the Respondent's overtime slips in order to ascertain the times at which the Respondent was starting her tours of duty. The purpose of reviewing the Respondent's overtime slips was not to check for accuracy. As far as Taylor was concerned, the overtime slips in question were accurate insomuch as the times which were indicated as the start and end of the Respondent's tour corresponded to the time actually worked by the Respondent. To the best of Taylor's knowledge, the Respondent was paid for the overtime as submitted on the overtime slips in question. Taylor stated, "[the Respondent] worked the tours, she was entitled to the overtime."

Taylor reviewed a copy of the 60 Precinct Telephone Record for Saturday, September 19, 2009, (RX A). Taylor acknowledged that there was an entry made by Police Officer Cannizzaro, on Saturday, September 19, 2009, at approximately 1500 hours, which stated that the Respondent was returned from sick "tomorrow at 9/20/09 12 to 8 tour." Taylor testified that he was not aware of this entry on the evening of

September 19, 2009. Taylor was aware that the Respondent was returned to duty from sick report at 2400 hours on September 19, 2009. Taylor explained that Johnsen ordered Dechen and Melchionna to go to the Respondent's home to make a notification because attempts at making a notification via telephone had not been successful. Taylor stated, "If [the Respondent] would have answered the telephone, the notification would have been made over the phone." Taylor also explained that he believed that the Respondent was not going to appear for work, as notified on September 19, 2009, because of her behavior. Taylor did not want the Respondent to be AWOL and he wanted to make sure that the Respondent understood when she was supposed to appear. Taylor clarified that he believed that the Respondent would not appear for work as directed because of statements that she made to Todino<sup>4</sup> and to the Sick Desk. The Respondent told Todino that she "would be in tomorrow." The Respondent, he said, told the Sick Desk that her tour was 1730 x 0205, which was in conflict with the direction given to the Respondent by Taylor when he told her that she was to become the first platoon desk officer effective the night of September 19, 2009, into the morning of September 20, 2009.

On re-direct examination, Taylor testified that the Respondent should have never incurred overtime prior to 0215 hours at anytime after June 21, 2009, which was when Johnsen had ordered the Respondent to start her tour at 1730 hours.

On re-cross examination, Taylor testified that he was not aware that the Respondent did not receive any overtime after August 16, 2009. Taylor did not know if the Respondent had earned the least amount of overtime of any of the other lieutenants assigned to the summer detail, or the entire command.

On examination by the Court, Taylor identified the command roster (RX B) that

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<sup>4</sup> In parts of the transcript, incorrectly transcribed as "Dadino."

was created early in the summer of 2009. He acknowledged that he had seen the roster during the summer of 2009, but was not sure if it was posted in the precinct. Taylor also indicated that he believed that reviews of the overtime within the command during the summer of 2009 were conducted by both the ICO and the commanding officer. Taylor acknowledged that he had nothing to do with the review of any overtime that summer.

Taylor also indicated that he received a phone call from Chief Banks during either late June or early July. Banks told him that the Respondent had an issue with her RDOs and her tours. Taylor believed that the main issue was that the Respondent's RDOs during the summer detail did not consist of a part of the weekend, but consisted of Tuesdays and Wednesdays. As a result of the conversation with Banks, Taylor also believed that the Respondent had a concern regarding working the night tour of 1730 x 0205. Taylor did not receive any follow-up phone calls from Banks, or anyone of a higher command regarding the Respondent.

Sergeant Joseph Melchionna

Melchionna has held the rank of sergeant since February of 1999. During the summer of 2009, Melchionna was assigned as the assistant ICO at the 60 Precinct. Among his many duties as the ICO, Melchionna was responsible for monitoring the arrest processing system, maintaining the overtime tracking database, inspecting police officers on their assigned posts, and preparing various reports.

On September 19, 2009, at approximately 2010 hours, Melchionna was posted by Dechen, the 60 Precinct ICO, from the Irish Fair Detail at Municipal Credit Union Park in Coney Island so that he could take a ride with Dechen to the Respondent's

residence for the purpose of making a notification to the Respondent. Although Melchionna was aware that the Respondent was the lieutenant assigned to the evening portion of the summer detail, he only knew her in passing. Melchionna described his interaction with the summer detail as being limited to inspecting the officers while they were on their assigned posts.

Melchionna knew that Dechen was trying to notify the Respondent, via phone, to report to work for the midnight tour, but the calls were neither answered nor returned. While driving to the Respondent's residence, Dechen made an unsuccessful attempt to contact the Respondent by phone. Upon their arrival at the Respondent's residence, Dechen placed another unanswered phone call to the Respondent before attempting to ring the Respondent's doorbell. Dechen and Melchionna waited a few minutes before ringing the Respondent's doorbell to afford the Respondent a chance to return their phone calls.

According to Melchionna, their vehicle was parked approximately 15 feet in front of the Respondent's house. Melchionna described the residence as a single family dwelling that had a small staircase consisting of three or four steps. When Dechen and Melchionna arrived at the Respondent's residence, it was dark outside. Melchionna and Dechen rang the Respondent's doorbell, and the door was answered by a woman claiming to be Ms. Person A. When Melchionna asked Person A if she was the Respondent's mother, Person A stated that she was "like a mother" to the Respondent.<sup>5</sup> Person A was informed that Melchionna and Dechen were present to speak to the Respondent. Person A was also informed that the Respondent could be in trouble if she did not speak to Dechen and Melchionna. Person A asked Dechen and Melchionna to wait for just a minute and she

<sup>5</sup> In her testimony, the Respondent identified the woman who came to the door as her mother-in-law

withdrew into the residence. Person A returned to the door and informed Dechen and Melchionna that the Respondent did not feel well, and did not want to come to the door.

Person A also indicated that the Respondent had taken two [REDACTED] Dechen and Melchionna reiterated to Person A that the Respondent could be in trouble if she did not speak with them. Person A went back inside of the residence and returned to the door shortly thereafter. Dechen provided Person A with a phone number, and requested that Person A have the Respondent call him by phone. Dechen told Person A that he and Melchionna would wait outside until they heard from the Respondent.

Dechen and Melchionna waited for approximately 30 minutes. During the 30 minutes, they made repeated attempts to speak to the Respondent by knocking on the door, and waiting for a response from the Respondent. Dechen decided that he would make one last attempt to see if the Respondent would come to the door and speak to him. Melchionna testified that Person A informed them "...if you're not the district surgeon, [the Respondent] said she is not going to talk to you."

Dechen went to his car, where he decided to call the district surgeon. Melchionna was standing adjacent to the vehicle when he heard a noise. Melchionna looked up and observed a woman dressed in a blue terry cloth robe. According to Melchionna, the woman waved and stated, "Hi, hi, I am Lieutenant Samuels. I'm home." Melchionna told Dechen that he thought the woman in the robe was the Respondent. When Melchionna started to walk towards the door, the woman spun around and slammed the door behind her as she walked back into the residence. According to Melchionna, the woman in the robe resembled the Respondent in appearance but he could not confirm, with complete certainty, that the woman dressed in the robe was the Respondent.

Melchionna knocked on the door once more and Person A answered the door. Melchionna asked her if the woman in the robe was the Respondent and Person A affirmed that. He asked if the Respondent would come to the door and Person A indicated that the Respondent would not. Person A told Melchionna that the Respondent would probably report for work, but also said that the Respondent may report sick. Dechen and Melchionna returned to their vehicle. Melchionna believed that Dechen spoke to either Johnsen or Taylor by phone, and was instructed to return to the station house.

Melchionna testified on cross-examination that he had been assigned as the assistant ICO since 2005 and Dechen was assigned as the ICO sometime in either August or September of 2009. Prior to Dechen's assignment, Melchionna was running the office with the assistance of another sergeant. Melchionna processed a majority of the paperwork handled by his office. Melchionna was unaware of the Respondent ever being offered the ICO's position by Taylor. Melchionna was not aware that the Respondent had made an allegation to the IAB concerning overtime. Although he did not review any overtime slips during his preparation for testifying at the present proceeding, Melchionna recalled making copies of the Respondent's overtime slips for [PBBS-IU]. Melchionna admitted that he probably signed most of those overtime slips. Melchionna explained that his responsibilities as the assistant ICO required him to check overtime slips to ensure that the slips are both mathematically correct, and properly coded. Information from the overtime slips was eventually entered into a data tracking system by Melchionna. Melchionna clarified that his responsibility is to verify that the overtime slips are correct.

On the night of September 19, 2009, Melchionna was dressed in civilian attire,

with the exception of a navy blue police raid jacket which could be readily identified by its various police markings and patches. Melchionna was told of the post change to the Respondent's residence in person by Dechen. Dechen informed Melchionna that the purpose of the post change was to notify the Respondent to report to work that night. Melchionna drove himself and Dechen to the Respondent's residence in an unmarked Ford sport utility-type vehicle and he agreed that he drove the vehicle onto the Respondent's street in a direction which was opposite from the normal direction of traffic. Melchionna parked the vehicle in front of a fire hydrant which was in front of the house adjacent to the Respondent's residence.

The lighting conditions were dark at approximately 2035 hours, when Dechen and Melchionna arrived at the Respondent's residence. The porch light of the Respondent's residence was on. Melchionna reiterated that he was standing adjacent to his vehicle when he heard a noise. Melchionna looked up to see a woman, who resembled the Respondent, waving at him. As Melchionna began to walk towards the steps, the woman quickly turned around, went back inside of the house, and slammed the door shut. Melchionna referred to a photograph of the Respondent's residence (RX J) and noted that the woman in the robe was standing approximately where there was a white flower pot on the Respondent's porch.

Melchionna indicated that calls were made to Johnsen to keep him apprised of the situation. During his post change to the Respondent's residence, Melchionna believed that the Respondent was on sick report. According to Melchionna, his first task was to make sure that the Respondent was okay and then to ensure that the Respondent knew that she had to report for work that night because she was scheduled to work. While

attempting to notify the Respondent, Melchionna was unaware that the Respondent had already called Todino, who was assigned to the summer detail, and informed Todino that she would be back when the surgeon returned her to duty. Melchionna explained that he believed that the reason why they went to the Respondent's residence was "to check on her because she had indicated that she didn't know she was supposed to come back to work.

Melchionna reviewed an entry from the 60 Precinct Telephone Message Log (RX E), made by Cannizzaro at 1500 hours on Friday, September 18, 2009. The message was addressed to the 60 Precinct desk officer, and was received from the Respondent. The message indicated that the Respondent was returned from sick report on September 20, 2009, and she would report for a first platoon.

Melchionna admitted that he could barely hear the statements made by the woman who resembled the Respondent and who was waving from the top the Respondent's front steps. Melchionna neither heard any foul language used by the woman waving from atop of the steps, nor did he feel offended by any of her statements. Melchionna and Dechen were in front of the Respondent's residence for approximately one hour. During that hour, Melchionna spent time both standing outside of his vehicle and sitting inside of it.

Melchionna testified under redirect examination that he identified himself as "Sergeant Joseph Melchionna from the 60 Precinct" when he went to the door of the Respondent's residence.

On questioning by the Court, Melchionna stated that he was in front of the Respondent's residence for approximately one hour. The incident when Melchionna saw a person believed to be the Respondent took place after he and Dechen had been present

at the Respondent's residence for 45 minutes. During the 45 minutes before the incident involving the person believed to be the Respondent, Melchionna was basically waiting outside, and making repeated trips from his vehicle to the Respondent's front door. After the incident involving the person believed to be the Respondent, Melchionna called Johnsen, and was directed to return to the command.

Lieutenant Roger Dechen

Dechen has been the ICO at the 60 Precinct since September 10, 2009. Prior to September 10, 2009, Dechen was assigned as the administrative lieutenant at the 60 Precinct. Dechen did not have occasion to meet or work with the Respondent prior to the summer of 2009. On September 19, 2009, Dechen and Melchionna were directed by Johnsen to report to the residence of the Respondent with the purpose of notifying the Respondent that she was to report for her next tour of duty at 2400 hours that night after being returned to duty from sick report.

Dechen and Melchionna arrived at the Respondent's residence and rang the door bell. A woman answered the door and identified herself as Person A. After identifying himself to Person A Dechen asked to speak with the Respondent. Person A went back inside of the house and then returned to the door and either stated that the Respondent could not or did not want to speak with him. Dechen then called Johnsen via telephone to inform him of what had transpired. Johnsen instructed him make another attempt to speak with the Respondent. Dechen rang the Respondent's doorbell a second time and Person A opened the door again. Dechen informed Person A that it was very important for the Respondent to speak with him. Dechen returned to his vehicle after his second attempt to

speak with the Respondent yielded negative results. Upon returning to his vehicle, Dechen spoke to both Johnsen and the Sick Desk supervisor by phone. The Sick Desk supervisor informed Dechen that he had spoken to the Respondent. After speaking to the Sick Desk supervisor, Dechen was under the impression that the Respondent was going to come to the door and speak with him.

According to Dechen, it was dusk when he arrived at the Respondent's residence. He estimated that he was in front of the Respondent's residence for approximately a half-hour or possibly longer. During that time, Dechen neither saw nor spoke to the Respondent. He did not recall exiting his vehicle and approaching the Respondent's residence after speaking to Person A the second time. Dechen admitted that a person did come to the door at one point, but he was not certain if that was the Respondent.

At some point during September of 2009, Dechen was directed by Johnsen to review the 60 Precinct Command Logs to determine at what times the Respondent was signing present for duty and end of tour. Dechen reviewed the Command Logs and compiled a list of the tours worked by the Respondent during the summer detail. Dechen then compared his list of tours worked by the Respondent to the corresponding roll calls. Dechen admitted that he may have made copies of the Respondent's overtime slips, but he never reviewed her overtime slips. Dechen did not have a relationship with the Respondent outside of the workplace and he had very little interaction with her while she was temporarily assigned to the 60 Precinct during the summer of 2009. Dechen was not aware of the Respondent's assigned tour during the beginning of the summer detail, but he was aware that at some point "she was switched to a 1730 to 0205 tour."

Dechen testified on cross examination that when he prepared the list of tours

worked by the Respondent, he listed that the Respondent had her regularly scheduled days off on September 15, 2009, and September 16, 2009.

One of the duties performed by Dechen, as the ICO, was to make sure that overtime slips were accurate. Dechen agreed that he not only had to make sure that the slips were accurate regarding the time that was worked, but also making sure that the overtime was legitimately authorized. Dechen did not review the Respondent's overtime slips as part of his investigation and he did not sign any of the Respondent's overtime slips during the summer of 2009. Dechen did recognize some of the signatures of persons authorizing the Respondent's overtime slips as belonging to persons who were assisting in the ICO's office. Dechen conceded that Melchionna was acting as the lead person in the ICO's office during the period of time when the command was without an ICO. Dechen was unaware if Taylor ever offered the position of ICO to the Respondent. Dechen did not review any overtime slips prior to his testimony. After reviewing overtime slips submitted by the Respondent for June 12, 13, 14, and 15, 2009, Dechen acknowledged that he neither signed said slips nor recognized the signatures of the authorizing persons. He conceded that the overtime slips appeared to be legitimately approved. According to Dechen, overtime slips that were not appropriate would be disapproved. Dechen had no knowledge of disciplinary action being initiated against anyone who approved overtime slips that were submitted by the Respondent that should not have been approved. Dechen has never seen anyone disciplined for improperly approving overtime.

Dechen worked a tour of 1525 x 2400 on September 19, 2009. Despite the fact that Dechen made numerous phone calls to the Respondent on September 19, 2009, he

never actually spoke to the Respondent on that night. Dechen placed several calls from his cell phone which resulted in messages left for the Respondent. Dechen could not recall for certain but indicated that he may have made at least one call from a Department phone at the 60 Precinct desk after he had returned from the Respondent's residence.

Johnsen directed Dechen to the Respondent's residence. According to Dechen, Johnsen was insistent that the Respondent be returned to duty for the midnight tour. Dechen was driven to the Respondent's residence by Melchionna in a black unmarked Ford Explorer sport utility vehicle which was equipped with an emergency vehicle light package. Dechen was wearing plainclothes. He did not recall if he and Melchionna had driven onto the Respondent's street opposite the flow of traffic and he did not recall if they had parked in front of a fire hydrant. They had parked in front of the Respondent's residence, approximately 25 to 30 feet away from the front of the Respondent's residence where he had spoken to Person A. Dechen testified that they had made two or three trips to the front door of the Respondent's residence.

Dechen indicated that he did not see or hear the Respondent. Dechen conceded that he may have told Baer that he identified the Respondent, but did not speak to her. Dechen was not certain if the woman, observed by Melchionna exiting the residence dressed in a robe, was the Respondent. Dechen did not recall if the Respondent's porch light was on. Dechen had difficulty recalling whether Melchionna was standing in the street or on the sidewalk when a woman exited the Respondent's residence and waved.

Dechen agreed that the Respondent was still on sick report when he arrived at her residence. Dechen testified that he was aware, prior to going to the Respondent's residence, that the Respondent had called the 60 Precinct and stated that she would be at

work tomorrow. Dechen was not aware if the Respondent's call was documented in any of the logs maintained at the 60 Precinct. Dechen could not confirm that the woman who emerged from the Respondent's residence and waved identified herself as the Respondent because Dechen neither saw nor heard the woman. Dechen explained that he could not hear the woman because he was sitting in the car and talking on his cellular phone when the woman appeared. Dechen could not recall whether or not any of the windows of the vehicle were open when the woman appeared.

Dechen agreed that the specifics of a temporary assignment are to be indicated on a member's Force Record. Dechen indicated that he reviewed the Force Record that was completed by the Respondent when she was assigned to the 60 Precinct. Dechen never saw the Respondent's Force Record from her permanent command. Dechen acknowledged that he did not see the date of original assignment, Personnel Order number, and necessity of assignment listed on the Respondent's Force Record from the 60 Precinct.

As part of his duties as the ICO, Dechen was responsible for monitoring overtime. Dechen was not aware of how many hours of overtime the Respondent worked during the summer of 2009 and it did not surprise him to hear that she worked 55 hours of overtime. Dechen did not know if the amount of overtime worked by the Respondent was on parity with the overtime worked by other supervisors in the command.

After returning to the command on September 19, 2009, Dechen spoke to Johnsen. During their conversation, Johnsen directed Dechen to call the Respondent one last time, and to document the call in the Telephone Message Log. Dechen followed Johnsen's directive and was unable to contact the Respondent. Dechen may have

informed Johnsen that he did not get in contact with the Respondent.

Sometime after September 19, 2009, during either late September or October, Dechen was directed by Johnsen to check Command Logs and Roll Calls to determine what tours the Respondent was working.

Dechen agreed that part of his duties as the ICO required him to be conscious of the budgeting and use of overtime. Dechen explained that a member of the service would ordinarily, but not absolutely, be paid overtime for working more than five consecutive days. Dechen noted that if a member of the service had a change in her regularly scheduled days off, the member could work more than five consecutive days without incurring overtime. Dechen noted that without changing a member's RDOs, a member of the service would be paid overtime for working more than five consecutive days.

Dechen did not know that the Respondent made a complaint to IAB concerning the allocation of overtime at the 60 Precinct. Dechen was aware that Cohen had stated to a fellow officer that he would spray mace at the Respondent. Dechen was aware that the Respondent has [REDACTED] Dechen agreed that Cohen was returned to his permanent command as a result of the incident. Dechen did not know if Cohen's gun and shield were removed. Dechen did not know if Cohen was issued a CD as a result of the incident. As far as Dechen knew, Cohen was never preferred charges and specifications as a result of the incident.

Lieutenant David Hurst

Lieutenant David Hurst has been assigned as a PBBS-IU investigator for last ten years. Hurst became familiar with the Respondent when he was assigned as the lead

investigator of a complaint which was made by the Respondent. According to the allegations in the complaint, the subject officer, Cohen, had allegedly harassed the Respondent. Hurst treated the investigation seriously. As part of the investigation, Hurst interviewed Cohen, the Respondent, and some other officers who may have been witnesses. According to Hurst, Cohen was disciplined in connection with the case.

Hurst was called upon to investigate another matter involving the Respondent in September of 2009. Hurst, and another member of his team, was called to the 60 Precinct to confer with Johnsen regarding an AWOL allegation against the Respondent. Hurst was unable to complete his initial conferral with Johnsen because he was called away to another matter. Hurst did revisit the allegation against the Respondent and eventually became the lead investigator in the investigation. Hurst conducted interviews of Taylor, Dechen, Melchionna, and the Respondent. Another member of Hurst's team interviewed Baer. As part of the investigation, Hurst reviewed various records. Among the records reviewed by Hurst, was a chart prepared by Dechen (DX 4). The chart set forth roll call and Command Log entries indicating when the Respondent signed either present for duty or end of tour. Hurst explained that he referenced the chart to see if the Respondent performed any tours other than the tours which she was directed to work. Johnsen and Taylor informed Hurst that the Respondent was directed to work tours of 1730 x 0215.

During his investigation, Hurst reviewed each overtime slip submitted by the Respondent from June of 2009 through September of 2009. Hurst had been informed of the Respondent's assigned tour, and reviewed every overtime slip submitted by the Respondent from June of 2009 through September of 2009 to verify if the Respondent was working unauthorized tours. Hurst came to realize that the tours were unauthorized

when he was informed as such by Johnsen and Taylor.

During the investigation, Hurst obtained copies of the Respondent's Activity Logs for June of 2009 through September of 2009 (DX 6) and conducted an official Department interview with the Respondent. The Respondent was asked during her official Department interview whether or not she had any entries in her Activity Log which documented an incident that would have kept her beyond the tour that she was scheduled to work. The Respondent told Hurst that she had no such entries.

On cross-examination, Hurst read from the Respondent's Activity Log for July 20, 2009. The Respondent's Activity Log entries for July 20, 2009, indicated that the Respondent had a tour change at 1420 hours to report to the Police Academy for a refitting of her bullet-resistant vest. Hurst indicated that the package of documents he reviewed was reflective of the tours which it was believed that the Respondent had changed. Hurst admitted that he did not know what the Respondent's authorized tour was on July 20, 2009.

Hurst agreed that the Respondent was threatened with bodily harm when Cohen, who possessed knowledge that the Respondent suffered from [REDACTED], threatened to spray the Respondent with pepper spray. Hurst was aware that Cohen was transferred back to his permanent command as punishment for the incident. Hurst was unaware of any penalty issued to Cohen pursuant to the adjudication of the CD issued to Cohen as a result of the incident. According to Hurst, Cohen was never served with any charges and specifications as a result of the incident.

According to Hurst, a summary was created to list the times that the Respondent had signed in the Command Log to begin her tour each work day (DX 4). Both Johnsen

and Taylor had told Hurst that the Respondent's authorized tour of duty began at 1730 hours. Hurst recalled being told that the Respondent was directed to work tours of duty starting at 1730 hours on June 21, 2009, and then again in August of 2009.

Hurst prepared an investigating officer's report on January 07, 2010, (RX M) which contained information that was received from Taylor during an interview that was not electronically recorded. Hurst explained that the decision not to conduct electronically-recorded official Department interviews of Johnsen and Taylor was made by his commanding officer, Captain Richard Deblasio, after a conferral with the Department Advocate's Office. Hurst believed that the investigator's report dated January 07, 2010, accurately documented the statements made by Taylor. Hurst acknowledged that the investigating officer's report reflected statements made by Taylor which indicated that Taylor had first sought to obtain a copy of the Respondent's vacation selections in August of 2009, prior to the approval of the Respondent's Leave of Absence Reports. During the investigation, Hurst obtained a fax transmittal cover sheet addressed to the 60 Precinct from the Respondent's permanent command, the 67 Precinct. The fax transmittal sheet was dated September 16, 2009 (DX 2). Notwithstanding that the fax cover sheet of the Respondent's vacation picks transmitted from the 67 Precinct was dated in September, Hurst could not conclude that Taylor was inaccurate in saying that he had the form in August because he might have had another copy. Hurst did acknowledge that the fax transmittal cover sheet dated September 16, 2009, was the only copy that he had seen during his investigation.

Hurst had never been shown a copy of the 60 Precinct command roster (RX B) during the course of his investigation. Hurst noted that it was typewritten "RDO Tuesday

"Wednesday" next to the Respondent's name on the roster. Hurst's understanding of the roster was that the tours listed as 1600 x 0035 pertained not to the Respondent, but to Sergeant Gersbeck, Sergeant Lau, et cetera. Hurst indicated that there was no tour listed next to the Respondent's name. Hurst also acknowledged that there was a line towards the top of the roster that listed the Lieutenant's tour as 1600 x 0045.

Hurst explained that the chart prepared for him by Dechen (DX 4) had a column titled "Roll Call." The column indicated the Respondent's tours as listed on the roll call. The chart listed the Respondent's tours during the July 4 weekend as 0000 x 0000. Hurst did not have any knowledge of why the Respondent's tour would have appeared as 0000 x 0000 on the roll calls for the July 4 weekend.

Hurst affirmed that the Respondent's Activity Log entries for July 20, 2009, indicated that the Respondent began her tour at 1400 hours and was subsequently posted to the Police Academy for a bullet-resistant vest refitting. Hurst acknowledged that the Respondent's Activity Log entries were consistent with the 1400 hour start time listed on Dechen's chart.

During the investigation, Hurst obtained IAB documentation in the form of typewritten logs. Hurst agreed that Taylor made telephone calls to IAB concerning this investigation on recorded phone lines at times, and unrecorded phone lines at other times. Hurst agreed that there would be someone documenting the sum and substance of any of the calls made to the phone lines that were not recorded. Hurst did not recall if he had received the IAB logs prior to his interview of Taylor on January 7, 2010. Hurst did not recall specifically discussing the details of the IAB logs with Taylor. Taylor never told Hurst that any information contained in the IAB logs was incorrect. Hurst did not recall

discussing the testimony provided by the Respondent during her official Department interview with Taylor. Hurst spoke to Taylor to gain clarity with regards to the Respondent's vacation picks. During the Respondent's official Department interview, Hurst learned of the Respondent's understanding regarding the questions surrounding her vacation selection. Hurst interviewed Taylor a few days after the Respondent's official Department interview and he hoped to find out Taylor's understanding of the vacation selection issue. Hurst conceded that he may have indirectly conveyed things that he had learned during the Respondent's official Department interview to Taylor.

Hurst affirmed that he was asked by the Department Advocate's Office to obtain the Respondent's Force Record from her permanent command, the 67 Precinct. Hurst testified that he never saw the specifics or details of a temporary assignment listed on any of the Force Records he reviewed. Hurst admitted that he saw dates, Personnel Order numbers, assignments, and pedigree information listed on Force Records. Hurst could not locate the Respondent's Force Record from the 67 Precinct, but did produce a Force Record from Fleet Service Division, which was one of the commands where the Respondent worked. Hurst telephoned the assistant ICO of the 67 Precinct and asked him to search for the Respondent's Force Record. Hurst got a call back and learned that the Respondent's Force Record could not be located. Hurst also called all of the other commands where he believed the Respondent worked and asked if they could locate the Respondent's Force Record. All of Hurst's inquiries yielded negative results. Hurst asked the Fleet Service Division to provide him with whatever Force Record they had on file for the Respondent. The Fleet Service Division complied with Hurst's request.

Upon examination by the Court, Hurst stated that during his investigation of

alleged unauthorized tour changes and unauthorized overtime, he used Dechen's chart to compare the Respondent's tours as listed on the roll calls with the times she signed both present for duty and end of tour. Hurst agreed that, according to Dechen's chart, the Respondent was listed as "RDO" on September 15, 2009, and September 16, 2009. Hurst acknowledged that he was aware that the Respondent was being charged with being AWOL on September 15, 2009, and September 16, 2009. Hurst testified that the purpose of Dechen's chart was to document what the Roll Call listed as the Respondent's tours, and to document the times at which the Respondent signed the Command Log at both the start of her tour and the end of her tour.

### The Respondent's Case

The Respondent called Deputy Inspector Corey Pegues, Police Officer Lance Hinkson, Police Surgeon Michael T. Murray, Senior Police Administrative Aide Ellen Caporale and Sergeant Joseph Todino. The Respondent testified in her own behalf.

### Deputy Inspector Corey Pegues

Pegues is the commanding officer of the 67 Precinct and has held the rank of deputy inspector for approximately two-and-a-half years. The Respondent, while assigned to the 67 Precinct, worked under the command of Pegues. The Respondent's first assignment at the 67 Precinct was to supervise the Impact Unit, which consisted of a few sergeants and approximately 60 rookie police officers. The Respondent's position in the Impact Unit provided her an opportunity to train rookie police officers. Pegues characterized the Respondent as being "very professional, intelligent, well spoken, and

she did her job to the best of her abilities." Pegues found the Respondent to be very effective and positive. Pegues had an opportunity to review and concur with an annual performance evaluation which rated the Respondent, during her assignment to the 67 Precinct, as being highly competent. According to Pegues, the Respondent had no problems with following orders. Pegues testified that the Respondent did not have any sick abuse problems. Pegues had great confidence in the Respondent's leadership abilities.

Pegues made the decision to temporarily transfer the Respondent to the 60 Precinct for the summer detail. This decision was made based on the fact that the Respondent was the junior lieutenant assigned to the command at that time.

Pegues was aware that the Respondent suffered from [REDACTED] and recalled that the Respondent, while assigned to the 67 Precinct, had been rushed to the hospital due to an [REDACTED].

According to Pegues, the ICO is in charge of discipline and works to make the command run smoothly. After considering the Respondent's work history and prior assignments, Pegues thought that the Respondent would be a perfect candidate for the position of ICO. Pegues called the Respondent to offer her the ICO's position upon her return to the 67 Precinct. The Respondent told Pegues that she would get back to him because she believed that Johnsen was going to offer her a position at the 60 Precinct. After a day or two, the Respondent called Pegues and told him that she would take the position.

Pegues testified that there is a procedure in the Administrative Guide that requires the exact tours of a member of the service on temporary assignment to be entered on the

member's Force Record. Pegues did not recall learning that the Respondent's Force Record was missing. Although Pegues could not recall the exact tours worked by the Respondent while she was assigned to the 67 Precinct, Pegues did recall that she worked evening tours.

Pegues testified on cross-examination that he never personally saw the Respondent's Force Record at the 67 Precinct. Pegues did not know the Respondent prior to her assignment to the 67 Precinct. Pegues and the Respondent did not socialize outside of work.

Pegues testified on re-direct examination that he has not seen the Respondent since she was temporarily assigned to the 60 Precinct.

Police Officer Lance Hinkson

Hinkson has been a member of the Department for three-and-a-half years and is currently assigned to the 88 Precinct. Hinkson was temporarily assigned to the summer detail in 2009. The Respondent chose Hinkson to be assigned as her steady driver because, according to Hinkson, he did not use cologne. Hinkson explained that the Respondent suffered from [REDACTED] and cologne aggravated the Respondent's [REDACTED] condition. Hinkson had not met the Respondent prior to being chosen to be her driver.

Hinkson became aware of threats against the Respondent. While in the locker room, Hinkson heard another officer state that he wanted to spray his oleoresin capsicum (OC) spray in the vicinity of the Respondent in order to trigger an [REDACTED]. After becoming aware of the threat, Hinkson reported the incident to the Respondent.

Hinkson heard a rumor circulating around the command which claimed that the

Respondent had made a complaint to the IAB concerning the allocation of overtime.

After hearing the rumor, Hinkson spoke to the Respondent about what he had heard.

Police Surgeon Michael T. Murray, M.D.

Murray is an orthopedic surgeon who has been employed by the Department as a Police Surgeon in a part-time capacity for approximately five years. Murray was assigned as the weekend surgeon at the Medical Division on September 19, 2009, and he examined the Respondent when she reported there that day. Murray indicated that he did not receive phone calls from Johnsen, Taylor or anyone else regarding the Respondent. Murray further stated that he never conferred with Johnsen or Taylor.

Murray conducted his examination of the Respondent by first interviewing the Respondent and then focusing on the Respondent's chief complaint. During the interview, the Respondent had informed Murray that she was treated and released from the hospital. Murray recalled that the Respondent had an [REDACTED] but could not specifically recall if the Respondent told him that she had an [REDACTED]. Murray listened to the Respondent's heart and lungs and heard nothing to indicate any difficulty breathing. Murray took notice that the Respondent appeared to be "comfortable." According to Murray, there was nothing to indicate that the Respondent "was having an exacerbation of her [REDACTED]." Murray estimated that his interview of the Respondent took approximately five minutes and his examination of the Respondent took an additional five to ten minutes.

Murray recalled that the Respondent was treated for [REDACTED] on a regular basis and that the Respondent would suffer from [REDACTED] at times. Murray was aware that

the Respondent's [REDACTED] was under control because of medication which the Respondent was taking. Although Murray recalled that the Respondent was treated and released from the hospital for an [REDACTED], Murray could not independently recall what medications the Respondent was taking at the time of the examination. Murray acknowledged that it would be common to treat an [REDACTED] with steroids for a brief period of time. Murray acknowledged that the Respondent did not complain of deep vein thrombosis. Murray also indicated that he is not an expert in hematology, and consequently could not possess the expertise to explain [REDACTED] in great medical detail. Murray indicated that he returned the Respondent to full duty as of 2400 hours on September 19, 2009.

Murray reviewed the doctor's record that he prepared after examining the Respondent and indicated that there is a caption on the record which says "illness or injury." Murray further explained that the number 15 is printed in the caption. Murray was unfamiliar with the number and assumed that it is some sort of computer code.

During cross-examination, Murray testified that a member of the service who reports sick during the weekend must report to the weekend surgeon unless they reported for administrative sick. After conducting an examination of the Respondent, which included a check of the Respondent's vital statistics, Murray decided that the Respondent could be returned to duty at the end of the day. Murray stated that the Respondent's vital statistics were normal, and that it was his medical opinion that the Respondent was able to return to duty.

Senior Police Administrative Aide Ellen Caporale

Caporale is assigned to the Payroll office at the 60 Precinct. Caporale indicated that the responsibility for notifying members of the service regarding changes of their assignments and tours belonged to members of the precinct's executive administrative staff or the chain of command beginning with the administrative lieutenant and moving up to the commanding officer himself. According to Caporale, sometimes a change of tour or assignment is issued to a member of the service on a written notification and sometimes it is a verbal notification. Caporale recalled that the Respondent was assigned to the summer detail in 2009 but did not recall the Respondent's actual chart.

According to Caporale, the Roll Call diary is used to track the requests for days off submitted by members of the service within the command. She explained that a check mark would generally be placed next to the name of a member of the service who requested a day off and the day off had been granted. Caporale admitted that things can change and that the check mark would generally mean that a request for a day off has been approved absent a subsequent entry in the diary. She also acknowledged that she does not know the meaning of notations made by other persons. Caporale explained that she could not be certain whether a check mark placed next to a member's name in the Roll Call diary indicated that the member was simply listed on the Roll Call or guaranteed the day off. Caporale did not work in the Roll Call office during the period of time being referred to in 2009; she worked in the Payroll office at that time.

Caporale reviewed the Roll Call diary entries for September 5, 2009. Caporale explained that the letters "IVD," which appeared next to the Respondent's name, meant individual vacation day. Caporale did not recognize the handwriting and did not know

who had made the entry on September 5, 2009. Caporale also indicated that she did not know the meaning of the check mark that was placed next to the September 5, 2009, diary entry. Caporale explained that she only worked in the Roll Call office for a short period of time, and it seemed to her that the process was to place a check mark next to a name in the diary when a request for a day off was approved.

Caporale reviewed the Roll Call diary entries for September 6, 2009, and indicated that the Respondent was listed with the letters "IVD" next to her name. The entry was not made in Caporale's handwriting. There was a second entry on September 6, 2009, which read "C/C RDO" with a check mark adjacent to the Respondent's name. Caporale believed that the notation represented "a change of assignment which would cause the person to have an RDO, a regular day off, instead of a workday."

Caporale reviewed the Roll Call diary entries for September 7, 2009, and indicated that the Respondent was listed again with the letters "C/C RDO" which meant that the Respondent was chart-changed to have a RDO on that day.

Caporale reviewed the Roll Call diary entries for September 8, 2009. She did not recognize the handwriting of the individual that had made the diary entry concerning the Respondent. The letters "VP" followed by the number "5" were written next to the Respondent's name. Caporale indicated that "VP" represented vacation pick, and the "5" meant that the Respondent had requested to be off for the five days of her vacation pick. As a result, the Respondent would have been on vacation until September 12, 2009.

Caporale reviewed the Roll Call diary entries for September 12, 2009. The entries were not made in her handwriting and she did not recognize the handwriting. Caporale explained that the entry pertaining to the Respondent indicated that the

Respondent was on vacation. There was a number 1 next to the entry, which represented the last day of the Respondent's vacation in a numerical countdown.

After reviewing the Roll Call diary entries for September 13, 2009, and September 14, 2009, Caporale indicated that both entries listed the Respondent as "chart change RDO." Caporale identified the handwriting of the entries for September 13, 2009, and September 14, 2009, as belonging to Senior Police Administrative Aide McManamy. According to Caporale, the chart changes on September 13, 2009, and September 14, 2009, would give the Respondent new RDOs on Sunday and Monday, assuming the Respondent was not being chart-changed into a rotating chart.

Caporale reviewed the Roll Call diary entry pertaining to the Respondent on September 17, 2009. The entry lists the Respondent's name with a line through it and a check mark adjacent to the entry. It appeared to Caporale that the Respondent had requested a vacation pick of four days. The request may have been approved at first as is indicated by the check. The line through the entry seems to indicate that request was either withdrawn by the Respondent or cancelled for some reason.

Caporale indicated that the Roll Call diary entry for the Respondent on September 18, 2009, listed the Respondent as being on vacation and was crossed out. The entry for September 19, 2009, also listed the Respondent as being on vacation, and was likewise crossed out. It was noted on September 19, 2009, that the Respondent was on sick report.

According to Caporale, the Respondent did not call her to inquire about the approval of any days off that had been requested. Any such call should have been directed to the Roll Call office to obtain such information.

Caporale explained that the procedure for preparing the weekend roll calls

required the Roll Call personnel enter the names of those who requested days off in the diary. The command was only allowed to authorize a certain percentage of the command to have off. Vacation picks are selected in the beginning of the year and the selections are to be adhered to because a vacation pick cannot be denied. Caporale was not certain if the rule which guaranteed a police officer's vacation selection also applied to the honoring of a supervisor's vacation selection.

According to Caporale, chart changes could be authorized by the commanding officer down to the administrative lieutenant. Chart changes were issued verbally at times and written out at other times.

As part of her payroll duties, Caporale processed Leave of Absence Reports. Caporale recalled receiving a Leave of Absence Report which was submitted by the Respondent on or about September 7, 2009, requesting to be off from September 17, 2009, through September 19, 2009. Caporale indicated that a chart change to change a member's schedule would remain permanent.

Under cross-examination, Caporale testified that she was assigned as the payroll supervisor in 2009. Caporale was last assigned to a Roll Call position approximately four years ago and she was not assigned to the Roll Call office during the summer of 2009. Based upon her limited knowledge of Roll Call procedures, Caporale acknowledged that notations in the Roll Call diary are made by the members assigned to the Roll Call office. Caporale acknowledged that, at times, Roll Call personnel have made entries in the Roll Call diary based upon information obtained from the person who requested the day off. Caporale further explained that the request needed to be approved as indicated by a supervisor's signature on the rear side of a Leave of Absence Report. Caporale admitted

that there have been occasions when members have called the Roll Call office and informed Roll Call personnel of a day off requested and approved. The Roll Call personnel entered the information into the diary based upon trust. The member would then submit an approved Leave of Absence Report at a later date.

During examination by the Court, Caporale testified she believed that the Respondent submitted a chart change for the week including September 15, 2009, and September 16, 2009, to facilitate changing into her old schedule of having Sunday and Monday as RDOs. According to Caporale, if the Respondent was changing into a schedule of Sunday and Monday as RDOs, Tuesday may have been the Respondent's RDO, and, as a result, there would have been no entry made for that day either way. Caporale explained that there were no Roll Call diary entries made for the Respondent on September 15, 2009, and September 16, 2009, which indicated that the Respondent was either working that day, or scheduled for RDOs. Caporale clarified that the Roll Call diary did not tell whether the Respondent was assigned to work or scheduled for RDOs on September 15, 2009, and September 16, 2009.

Sergeant Joseph Todino

In the summer of 2009, Todino was assigned to the summer detail in the 60 Precinct. During that time, he was assigned to several tours; he worked 1515 x 0047 and also he worked 1717 x 0212. He said the actual start time on the 6 to 2 tour was 1550 hours. He said there was one other sergeant on the 6 x 12 tour and two others on the 4 x 12 tour. He said there was occasionally a shortage of sergeants. He agreed that Torres was out for about six weeks during the summer detail and that did create a shortage.

Todino worked under the Respondent's supervision on the summer detail. He said he took vacation of a week in July and a week in August. Other sergeants took vacation during the summer. He agreed that, sometimes, there were no sergeants on the night platoon. He agreed that, occasionally, he was directed to come in early for coverage. Todino performed approximately 85 hours of overtime that summer, which was authorized by Taylor or the administrative lieutenant. Decisions to keep personnel beyond their tours depended upon how much coverage there was. They held nightly meetings at around midnight, usually at Nathan's, with the Respondent to make this determination. The Respondent usually stayed with the platoon until it was dismissed.

On rainy days, officers were occasionally allowed to take lost time or more commonly they would be reassigned.

During the summer there was a homicide of an elderly woman. A temporary headquarters vehicle (THV) was established and he was assigned to it at the direction of the Respondent.

On September 19, 2009, he received a call from the Respondent who told him that she was returning from sick. He notified the desk officer. He did not make an entry into the log. Looking at the telephone log (DX E) he said the entry was made by the officer he spoke to. Looking at the log, Todino stated that this occurred on September 18, 2009.

Todino had heard of an incident involving Cohen. He said he believed there was a physiological fitness hearing held. He did not know of any other action being taken with regard to Cohen.

On cross-examination, Todino explained that the mix of tours he worked was to provide coverage as they were dealing with crowds. He said the administrative

lieutenant, Dechen, would notify him of the changes and that it was usually done verbally. When he was told to work the 6 x 2 tour, he understood that was to be for the rest of the summer.

Regarding shortages of supervisors, Todino agreed that he was not involved in any decision as to how many supervisors would be required on each tour nor was he consulted on the issue. He said that at the beginning of the detail he was part of a two-day orientation. Dechen was the instructor and Johnsen and Taylor also came in. He recalled that the Respondent was at the orientation.

Todino said that, generally, he received more overtime during the summer detail than in other assignments. He said that, occasionally, the Respondent would hold them over for overtime. He occasionally worked overtime after 2:00 a.m. He said he sometimes authorized overtime for officers after midnight. He believed he returned to his regular command on September 18, 2009.

Regarding the call he received from the Respondent, he said that she just said that she would be returning to duty the next day. Regarding the orientation, he said he believed the first day was June 3, 2009. He said that he believed that the Respondent had been at the orientation, that he remembered seeing her there, but that he was not sure.

Todino recalled that there had been a funeral on June 4, 2009, for Detective Omar Edwards.

#### The Respondent

The Respondent received a Bachelor of Science degree from New York University in 1988. Prior to joining this Department, she worked for the New York City

Child Welfare Administration. She worked for the Bushwick Homeless Shelter for Women as a case worker and she also worked at the Police Athletic League as the assistant director. She joined the Department in October of 1990 and, at present, has over 20 years on the job.

Her first command was the 79 Precinct where she worked for three years. She then went to the IAB for about five years. She was promoted to sergeant in 1999 and worked at Police Service Area 2. She returned to IAB as a sergeant and worked there again for about five years. All told, she was in IAB for about eight-and a half years as an officer, detective and as a sergeant. After leaving IAB in 2004, she went to the Detective Bureau Juvenile Crimes Squad where she was commanding officer of the Manhattan office. She worked there until she was promoted to lieutenant in December of 2008. As a lieutenant, she was assigned to the 67 Precinct then to the summer detail five months later.

While at the 79 Precinct, she was cop of the month. In IAB, as a detective, she was put in for promotion to second grade but was promoted to sergeant before that happened. As a sergeant in IAB she received approximately three Commander's Day recognitions for excellent investigation. She said she received numerous annual awards for attendance and believed she had one five-year award for perfect attendance.

As to discipline, she believed that in 1993 she may have received a CD for failing to safeguard a prisoner's property.

She received the assignment to the summer detail on June 2, 2009. She immediately called the 60 Precinct and spoke to Anderson. Anderson was assigned to the 60 Precinct but was also assigned to the summer detail. He advised her she was to report

the next day at 7:00 a.m. She stated that she was told that she would get RDOs that included part of the weekend.

The Respondent said that she reported to the 60 Precinct on June 3, 2009. She met with Johnsen for the first time on June 4, 2009, and he informed her that her RDOs would be Tuesday and Wednesday. She told him she was under the impression she would get part of the weekend off and she was told that was not to be the case. She noted that Anderson had Sunday and Monday as his RDOs. The Respondent stated that she was the only female and minority in the rank of lieutenant or above. She said there were four minority sergeants

The Respondent stated that the instructions she receive was that she was told that she would be the night platoon commander. The night platoon would be a 6 x 2 tour. However, she said that "starting the detail the whole entire night platoon would be doing 4 to 12's."

The Respondent stated:

I felt that there definitely wasn't a welcome mat for me, and I was not offered the same type of privileges as the other supervisors. There were precinct management meetings which in every precinct that I've ever worked at it is a customary practice that all supervisors assigned to the command attend that meeting and are informed of what is going on in the precinct as well as have an input in that. I was not offered I was not offered the opportunity to go, nor was I updated on what was discussed at those meetings...I had no input in what my subordinates did.

The Respondent testified that she was not informed of decisions about her staff and did not question it because she felt there was no room for discussion. One incident she recalled involved the stadium detail. Most of that detail worked 4 x 12 tours and was part of the summer detail, which would have made it part of her platoon. However, she

was clearly instructed that she was not a supervisor of that detail. The Respondent stated that this caused a lot of conflict and officers in the detail showed her no respect. She stated that if she gave instructions, she would get feedback that she was not their supervisor. This would come to her through their supervisor, Lieutenant O'Neill, the Special Operations Lieutenant, who was not part of the summer detail. The Respondent testified that there was a climate of disrespect. The Respondent stated:

I always had to exert my authority to let them know that I was a lieutenant and that I had responsibilities and I also had the authority to direct them what to do.

The Respondent cited as another example the fact that she had to constantly instruct officers that subordinates are supposed to acknowledge a lieutenant with a salute. She stated that, while on patrol, she had to enter the beach through the boardwalk and that the entry streets are blocked off by members of the detail. She had to remind them "time after time" that they had to open the area so that she could get through. She said it was disrespectful for her driver to have to get out and open the barrier or even having to discuss the matter.

The Respondent also stated that she was not informed in advance as to when dignitaries or members of the clergy were making an appearance at Coney Island. She said she would find things out as they occurred. On questioning by the Court as to whether she did anything about this, the Respondent stated that she had gone to Dechen about it. She also said that she did not have the two days of training. On further questioning by the Court as to whether she saw any supervisors about this, the Respondent stated that she did not, stating, "I did not speak to Captain Taylor or Inspector Johnsen about not being informed."

The Respondent stated that after learning that her RDOs were going to be changed, she was surprised and taken aback. She spoke to a friend of hers:

I reached out to a supervisor that I worked for in the past that I knew had contact with the borough XO [executive officer], Chief Banks to ask him to inquire with the precinct regarding my days off.

The Respondent stated that in her initial conversation with Johnsen, when he told her "this is what it is," Johnsen seemed not to like the fact that she had questioned the schedule and that she had complained that the other lieutenant had Sunday and Monday off. She said there was no discussion of the issue.

The Respondent explained how the platoon worked. She stated that, initially, everyone worked a 4 x 12. She said Johnsen initially told them they would all go to a 6 x 2 tour, but that in late June, the platoon was split into two squads, one starting at 1600 and the other starting at 1730. The Respondent said she had no input into who went where and she was not formally told of the change. "It just happened."

The Respondent said that she was not formally given any instruction regarding how she was to schedule herself. She stated, "I just assumed I had two squads in one platoon. I had responsibilities for both groups." She stated that she signed the Activity Logs of all members of the platoon and did their quarterly reports. To cover her assignment of two squads on one platoon, she came in early. She did this, she said, so that she would know what the first squad was doing when they turned out, what their manpower was and what special conditions were going on. This, she said, enabled her to prepare for the 1730 roll call. She said she put herself in a position to know what was happening with both squads.

The Respondent stated that Johnsen was "absolutely" aware of this because he

was at work most days when she began her tour. Taylor, she said, was also present. Neither of them, she testified, said anything about her not working, as she was doing this up until August 17, 2009, sometime after 1:00 in the morning. Taylor called her in to ask why members of her platoon were working past their tour. He asked her when she had started her tour. He then instructed her that she was to start work at 1730 and that everyone assigned start at 1730 was to work that tour.

Going back to June 4, 2009, the Respondent said she worked 0725 x 1610. That day, there was a funeral for Detective Omar Edwards and that, she said, took up most of her tour. She was not present for orientation that day. She said she was not afforded any orientation when she started at the 60 Precinct.

Regarding July 11, 2009, the Respondent specifically recalled coming in at about 1545 hours that day. She stated that she came in early after reviewing the Activity Reports for the officers assigned to her platoon for June and, although it had been a rainy month, she found the activity was low and she needed to instruct both platoons at roll call as to what her expectations were.

She said that Taylor asked her why she had come in early that day. She told him about her addressing the roll calls and Taylor did not express any problem with that. The Respondent asserted that prior to August 17, 2009, neither Johnsen nor Taylor had any problem with the tour she worked. The Respondent noted in her Activity Log that on August 14, 2009, she had started at 1545 hours. The week before, there had been a homicide and members of her platoon were used to staff it. Johnsen, she said, called her at the desk and informed her that she would be covering the summer detail as well as the THV established in relation to the homicide.

The Respondent stated that whenever she worked overtime she submitted forms before she went home. As far as she knew, the overtime slips were approved.

Regarding the incident with Cohen she noted that Cohen was a white male. She said she was told by one of the officers in the detail that Cohen, while talking in the locker room, had said something about not liking her and that he wanted to hurt her. He mentioned spraying mace to make her sick. The Respondent noted that it was common knowledge that she has [REDACTED] because she used her pump from time to time to regulate her breathing. Also, she had selected a driver, Hinkson, who did not wear things that would affect her allergies, such as cologne. Both Taylor and Johnsen, to her knowledge knew about the [REDACTED] condition.

The Respondent said that the first threat from Cohen came near the end of July. On August 15, 2009, she learned of a second threat. She said she took this second threat more seriously because he had allegedly said that he wanted to use the mace to shut her lungs down. She was told that one of the officers had said to Cohen that to do so would probably kill her and Cohen allegedly said, “[S]o be it.”

The Respondent said that, after this second incident, she conducted her own investigation and that everyone was afraid to get involved. She said she spoke to the source of the information directly and she identified them as two male black officers. Both, she said, expressed fear. Although one of the officers said that he would do what she wanted, she assured him that, “I will make sure that your identity is not discovered.”

The Respondent testified that she notified two lieutenants of the incident. Later, when Taylor came on duty, she notified him and he was “very alarmed” by it. She stated that she told Taylor that she wanted to deal with Cohen in her own way, that she was a

lieutenant and he was a cop and that he needed to understand who the boss was.

Taylor, she stated, asked her if she wanted Cohen taken out of the detail and put in an Impact Unit or on the midnight shift. She also spoke with Johnsen about the threat, the next day, August 16, 2009. She said she had not mention the incident to Johnsen but that he called her into the office to discuss it. The Respondent described it as an "interrogation." Johnsen, she said, told him that this was a very serious allegation and that he wanted to know her sources. The Respondent stated:

It seemed the focus was who told me this, and not the fact that this cop had threatened me. So I became very alarmed by the way Inspector Johnsen was interrogating me regarding this issue.

The next morning, she called a friend who worked in Community Affairs at headquarters, who was a liaison to the Police Commissioner. She met with this person and provided details about the threat.

With regard to overtime, the Respondent stated that she noticed that on a daily basis, and particularly on the weekends, there was a great deal of overtime being given out to lieutenants, including Anderson, who worked with her. She said they were being allowed to extend their tours four, six and eight hours, almost double for certain events, as well as being allowed to work RDOs for overtime. She said she saw O'Neill get 18 or 19 hours in one day. She said that Lieutenant Stapleton, who was modified, earned overtime by working his RDO at the desk. She said there was a pregnant sergeant on limited assignment who worked overtime on the detail. The Respondent stated, "I thought it was abusive and unusual that I was not offered any of that." All of those members of the service, she asserted, were white. The Respondent stated that she worked 55 hours of overtime during the entire summer. She stated that this had occurred up to

August 15, 2009, because she did not earn any overtime after that.

The Respondent said she mentioned the overtime issue to her contact in headquarters, but overtime was not her main concern it was the issue with Cohen.

With regard to September 15 and 16, 2009, the Respondent denied that she was AWOL. The Respondent asserted that those were her RDOs. Using Taylor's calendar (DX 1), the Respondent explained that September 5 was her IVD as listed on the calendar. Her RDOs, she explained, were shifted from Tuesday and Wednesday to Sunday and Monday so that Sunday, September 6 and Monday, September 7 became her RDOs for the chart change. She pointed out that this is noted on the calendar followed by days numbered 1, 2, 3, 4, and 5 for September 8 through September 12. These days, she said, became her vacation days. September 13 and 14 were RDOs as a result of another chart change and she went back to her regular RDOs on September 15 and 16 as noted on the calendar. She stated that her first day back to work was to be September 17.

The Respondent stated that she went to Florida from September 5 and returned to New York on September 12. On September 13, 2009, she called the command because she anticipated that the detail would end by Monday, September 14. She was advised that she was on the roll call for September 13. She was told that they were going to put in a chart change day for her but she said not to do that because she was RDO. On the morning of September 14, 2009, she called the Roll Call office. She said that she was on the roll call for September 13 in error and they agreed. She then inquired about September 17, 18, 19 and 20, as she had put in a request for four additional days because she had planned a trip to Maryland.

On September 16, she received a call from Taylor at about 1500 hours. He left a

message that she was to come back to work the next day and that her days off were denied. He said she was to call him back forthwith, which she did. She said that he told her that she had made him look stupid to the inspector, that she was cheating him out of days and that she was to return to work the next day, September 17, 2009, at 1530 hours or she would be AWOL. She said she told him it would be difficult to get to work, that she was out of town with a sick family member. He repeated that she had to be in or she would be AWOL.

The Respondent reported for work as directed. The Respondent stated that there was no discussion about her being due in on September 16. She noted that the entries on Taylor's calendar supported her assertion that she was RDO on September 15 and 16.

On arrival at the precinct on September 17, 2009, she was instructed to see the commanding officer. Taylor and White were there. Taylor told her that she had 11 unauthorized days of leave and 55 unauthorized hours of overtime. Based on this, she was to be assigned as desk officer on the midnight tour. He gave her a schedule for the week and had her redo her Leave of Absence Reports from her original vacation pick and change dates. She further stated; "He told me that if – he made a threat. He told me if I made another phone call that next time I would need a lawyer, not a delegate."

When the meeting came to an end, the Respondent stated that she went upstairs. She said she walked up three flights to get dressed and she said she was a little stressed from the conversation. She said that her [REDACTED] started acting up and she tried to get control of it with a pump but was unable to do so. She stated that she called the desk and asked them to get an ambulance as she was not feeling well. She was taken to [REDACTED] [REDACTED] Hospital by ambulance with a police escort. Her family was not notified. She

spent one night at the hospital. She said she was diagnosed with an [REDACTED] and a [REDACTED], [REDACTED] and some [REDACTED] problems. She did not know all of the medications she was receiving because it was done intravenously but she did know that she was on steroids and antibiotics. She believed she was on [REDACTED] [REDACTED] and that she had [REDACTED] and should keep her feet elevated. She was told she should not be standing or sitting for long periods of time and not to exert herself too much. She was told to follow-up with her pulmonologist. She was given about five prescriptions. She was released from the hospital on September 18, 2009.

Upon returning to the precinct to pick up her car, she called the Sick Desk and learned that no one had reported her sick to the Medical Division. She stated that this was unusual in that she was taken to the hospital while on duty and no one had notified her family or the Sick Desk. The district surgeon did not come to the hospital. She stated that there is a sick log and there is a hospital log. She stated that, when a member goes to the hospital, there are special notifications that should be made and that, as far as she knows, they were not made in her case.

The Respondent has never been categorized as chronic sick and she has received awards for good attendance. On September 20, 2009, the Respondent saw her private physician who recommended that she see a pulmonologist right away. The physician told her to stay on her medication and to come back in a week for re-evaluation.

The Respondent stated that she saw a district surgeon at the Medical Division on September 19, at about 10:00 a.m. She stated that she got to the office early, at 9:15 a.m. and spoke with the officer at the reception desk. She explained that she had an [REDACTED] [REDACTED] and was told that she would be the first one to see the doctor. She

indicated that she waited until the other officers were seen and then she was let in. The doctor and nurse were wearing masks. The Respondent noted that this was during the time of concern about the H1N1 virus. She said she was asked questions about herself and the summer detail. She said she was asked when she thought she would be done with the detail and what tours she was working. She presented her discharge papers from the hospital and was told by the doctor that he did not need them.

She said she had an [REDACTED] and was told that it could only be determined with a blood test. She stated that she had a fever while in the hospital.

After she left the Medical Division, the Respondent stated that she went home. She called the precinct and said that she was "off sick" until 2400 hours and that she would be in "tomorrow" for her tour. She said that she was very tired from being in the hospital and was not getting sleep. She stated that she took some [REDACTED] in the hope of getting some rest.

The Respondent stated that she received a call from Baer at the Medical Division at 9:00 p.m. Baer told her that there were members of her command outside her residence. She asked why they were there and Baer told her that they needed to make sure that she was okay and confirm that she was home.

The Respondent said that, as a result of that phone call, she put on her pajamas and went to the door. She put her head out the door and yelled out her name. She stated that she then went back inside and went downstairs and back to bed.

The Respondent stated that Baer called again later but that she did not receive the call in person. Baer left a message. She stated that she first heard that message on the evening of September 20, when she reviewed her messages. The Respondent then

reviewed a calendar and said that she reviewed her messages on September 21 and that is when she first heard it.

The Respondent stated that she was suspended on September 20 for being AWOL. She said that she was told that she had failed to follow an order from the Medical Division. She was brought first to the 63 Precinct then to the 60 Precinct where she arrived a few minutes after noon. She was suspended at approximately 1630 hours.

The Respondent testified that she called the 60 Precinct [roll call office] on September 14 at 10:33 a.m. The call lasted three minutes.

Going back to the events of September 19, the Respondent stated that members of the service came to her home in an unmarked black Jeep which was sitting in front of her house. Melchionna was the operator while Dechen was on the passenger side on the telephone. She stated that neither of them came out of the vehicle when she identified her self as it was "a very quick exchange."

The Respondent knew the vehicle was a Department vehicle. It was parked by a fire hydrant in front of her house facing the wrong way on the street. The Respondent stated that she was concerned that the neighbors would know that the police were at her house and she was concerned that it would bring attention to her as a police officer. She stated that she had been taught to be discreet about that.

The Respondent learned through a Department order that the detail ended on September 24, 2009, and that the officers were returned to their commands. She was not on the list as she was returned to her command upon suspension. The Respondent noted that Cohen was returned to his command at the end of the detail pursuant to that order.

With regard to her Activity Log, the Respondent stated that she understood that

she was supposed to make entries for radio runs and activities that she performed. She noted that, as Todino had testified, there were times when she stayed past her tours which was predicated on the fact that some of the bars were still open. There were sometimes an overflow of crowds in these bars and they (she and other officers) stayed on duty but she did not make entries for that. Where there were significant events that occurred past regular hours, she noted them. One involved a shooting at about 1:00 a.m. in which she took over the crime scene.

The Respondent outlined some of the events that occurred in Coney Island during the detail. On June 21, 2009, which was Father's Day, she was the platoon commander as well as the detail lieutenant. In addition, that day was the first of the special events, the karaoke event, which occurred that Sunday and every Sunday from 2:00 p.m. to 6:00 p.m. On Sundays, she was, generally, the highest ranking member working that platoon.

During the July 4 weekend, her tour was listed as an "open tour" for July 3, 4 and 5. There were many events at Coney Island including a volleyball tournament which was all day from 9:00 a.m. to sundown. On Sunday, July 12, she also had an open tour. That day, they had the Coney Island Psychosomatic Society from 4:00 p.m. to 5:00 p.m.

On Friday, July 17, they had an event at one of the bars which was frequented by firefighters and cops, Peggy O'Neal's. On Thursday, July 23, there was a Gladys Knight concert. On Friday, July 17, there was a shooting at 0150 hours. Going back to June 26, she said that was the day after Michael Jackson died and there were special events at Polar Express, a location where there were numerous arrests on an ongoing basis. They had a late night that tour.

On June 29, 2009, a day she also worked late, there was, she said, a live band at

the Cha Cha Bar. There was also an event at that bar on August 1, 2009. She also started early, at 1600 hours, because of the USHA Handball Tournament. The Respondent stated that she was also assigned to a THV that had been set up after a homicide which remained in place for three to four weeks. There was also a Level 1 or 2 mobilization called that day.

In the early morning hours of August 17, 2009, the Respondent said, she had a conversation with Taylor. He advised her that she was overstepping her boundaries with overtime and that going forward she would have to start her tours at exactly 1730 hours for herself and other personnel who were not starting their tours at the proper time.

The Respondent did not work overtime after August 17. The Respondent testified that prior to August 17, 2009, both Johnsen and Taylor had seen her coming to work early and were aware of her tours.

The Respondent acknowledged that on August 28, 29, 30, 31, and September 3 and 4, she did not come in at the time ordered. She explained:

There was rain a lot of the days occurring in that period. The beach was closed because there was a hurricane as well as one of the main vendors, if that's what you call it, who was responsible for the Dreamland Park had shut down the park area. So between the rain and the park being shut down, there was no activity in the detail late at night, but I was instructed what tour I was supposed to do and I went outside of that.

On those days, the Respondent she came in earlier than ordered and left earlier. No overtime was incurred for those days. The Respondent also testified that, on some of these days, she did ask for early excusal, which was granted.

The Respondent testified that, as a result of these charges being brought, she has felt very tired and worn out.

On cross-examination, the Respondent indicated that she learned she would be transferred to the summer detail on June 2, 2009. The Respondent stated that she was not happy about the transfer. The Respondent agreed that she had stated that she called the 60 Precinct to find out when she should report and Anderson just happened to be there. She did not know Anderson prior to that. Anderson, she stated, was permanently assigned to that precinct. She did not know how long he had been there but agreed it was more than one year. She described the conversation as informal. She stated that the inspector had told him that the lieutenants would have part of the weekend off.

She was told to report to the detail the next day, June 3, 2009. On that day, she went to the 67 Precinct first and got to the 60 Precinct after 7:00 a.m. She said she sat in an administrative office with Dechen for part of the day and then she went back to the 67 Precinct and moved because she was going to a funeral the next day. While she was with Dechen, there was minimal discussion about the work of the detail and she noted that Dechen was not her boss. She did not know about any orientation sessions.

On June 4, 2009, she started at after 7:00 a.m. She was there for two hours and then went to the funeral of Detective Omar Edwards. She was at the funeral until about 1:00 p.m. Before she went end of tour, she was called to Johnsen's office. He spoke to her for about ten minutes about the detail, explaining how important the detail was, that there were a lot of people that visited Coney Island during the summer, that the beach was very important and that it was important that there be strict enforcement. He told her it was important not to let people get drunk and that if they lost the beach they would lose the detail. She said he told her that she needed to step up to her game and that she would be on the night platoon working 6 x 2 and that her RDOs were Tuesday and Wednesday.

The Respondent was asked about a statement she had made on direct examination in which she had said that she was not what the inspector was expecting. She stated, "It appeared to me they were expecting a female white lieutenant and I was a female black."

When asked to explain she stated:

My days off were changed. I did not feel a welcoming party. There was no one there to --when I was on the phone with Lieutenant Anderson, he was very cordial, very friendly, sharing a lot. When I got to the precinct that Friday, no one came to me and welcomed me any more, and pretty much was by myself for that whole day.

Asked about her RDOs being changed, the Respondent agreed that there had only been an informal conversation with Anderson but she noted that Anderson kept his RDOs. When asked if she agreed that Anderson was regularly assigned to that precinct, the Respondent replied that they were both on temporary assignment to the detail.

The Respondent agreed that, in her initial meeting with Johnsen, she was told that she was going to start off doing 4 x 12 tours and that, eventually, she would get switched to 6 x 2 tours. She agreed there was a time when the platoon was split into two squads with some working 4 x 12 and some working 6 x 2. She believed this occurred in the last week of June, before July 4.

The Respondent stated that when she called her contact at headquarters to complain about her RDOs, she was told they would be changed. She stated that she was "unhappy" when she learned that they would not be changed.

With regard to disrespect in the 60 Precinct, the Respondent stated that a lot of times while on patrol, instead of waving to her, officers would turn their backs. "When I pulled up to officers on patrol, they did not salute me." She complained that when her car came to an area that was closed to traffic, barriers were not moved for her and that on

radio runs the officers would take their time. "I had to actually go over the radio and have [the dispatcher] at some time direct that they give me an ETA and a 10-84 [arrival on the scene] time."

Regarding September 19, 2009, the Respondent stated that she was aware that Dechen had called her once. She said she had spoken to Baer once. She did not recall him telling her anything about Dechen calling her. She stated that she first heard the message left by Dechen on her answering machine a day or two later. The Respondent acknowledged that she saw two members of the service parked in a car outside her residence. She agreed that she made a call to the Sick Desk and asked if anyone from the Department surgeon was at her residence. She was told no.

The Respondent stated that she asked the question because her mother-in-law had told her that there were people from her precinct at the door. She said that she did not open the door because she was sick and not dressed. The Respondent stated, "I opened the door to let them know that I was inside my residence because I didn't want to be considered out of residence on sick." She stated that she had two doors, one a security gate with glass, which she said she opened and "I stuck my head out and I yelled and I waved." It was nighttime when this occurred.

She was aware, because her mother-in-law had told her, that two officers had knocked on the door. She claimed she did not know that they wanted to speak with her. She did not remember if her phone was shut off or on vibrate. The Respondent claimed that she absolutely did not know that they were trying to get in touch with her so that she would not be declared AWOL. She said she did not know what they were going to tell her. The Respondent, when confronted with her previous answers at an official

Department interview, agreed that, at that time, she had said that she knew they were attempting to notify her about an "AWOL proceeding." She recalled that, at the interview, she had said that she was out sick until 2400 hours, that when Dechen called, she did not know that she could be returned in the middle of a tour, and that, because she thought what they had to say was irrelevant, she went to sleep. The Respondent denied that she knew she was going to be AWOL.

The Respondent recalled submitting a letter with her version of events. She acknowledged that she said that it was not until late August that things fell apart at the command for her. The Respondent agreed that after she complained about Cohen everything went downhill in the command for her after that.

The Respondent agreed that when she learned of the threat from Cohen, she had her driver pick up the person who heard it. She did not report it to IAB because she is a lieutenant and felt she was dealing with an officer who was probably not thinking clearly about what he was saying. She said she did not want to hurt that officer's career and, as a temporarily assigned member, did not want to bring any negative light onto the command. The Respondent had spent eight-and-a-half years collectively in IAB.

The Respondent stated that she was aware that Johnsen had conducted an "IO-9"<sup>6</sup> hearing with Cohen. She asked about it later and was told that the matter was with the Department Advocate's Office. She did not have to work with Cohen after the complaint. She agreed that Johnsen seemed very concerned when he learned of her complaint. She said that, at that time, Johnsen had ordered her to the command and seemed less interested in the threat than in finding out who had told her about it. The Respondent agreed that in conducting an investigation it is important to talk to the

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<sup>6</sup> Patrol Guide Procedure 205-47, Temporary Removal of Firearms in Non-Disciplinary Cases.

witnesses who heard the threat firsthand. She explained that she felt that her allegation against Cohen was not handled fairly because he got his guns back the next day after the event. She said that Johnsen was not happy that she was not divulging her source. The Respondent was aware that the matter was subsequently referred to IAB. She stated that she was interviewed by the PBBS-IU and asked to bring her source forward, which she would not do because the command would know who he was.

The Respondent stated that following that she called a civilian member of the service who is a friend at headquarters. She stated that she called this person on a private cell phone and that they met outside the building. The purpose of this meeting, she stated, was to protect the officers who had come forward to her with information about Cohen. She said the person she spoke with reported it to the commanding officer of IAB. The Respondent stated that feared for her safety after the second threat, which she learned of on August 15, 2009.

With regard to the vacation pick, the Respondent agreed that Labor Day weekend is a very busy time at Coney Island. She agreed that, initially, Taylor was more than accommodating when it came to setting up her vacation. She agreed that on September 4, before going on vacation, she put in a request for four additional days which was not approved. The Respondent stated that she called Roll Call on September 14 to address the issue of her being on the roll call for September 13 and to inquire as to whether her other leave request had been granted.

The Respondent testified that when she spoke with Taylor on September 16, he told her that if she failed to appear on September 17, she would be AWOL. She agreed that during that call Taylor never mentioned that she was supposed to be there that day.

She said he expressed no concern at all that she was not in on that day, September 16.

She said the only comment Taylor made was that she was cheating him out of days. She thought that was a reference to her request to be off the four days from September 17 to 20, 2009.

The Respondent stated that when she met with Taylor on September 17, he gave her a schedule for the following week. A short while later, she was transported to the hospital by ambulance.

The Respondent stated that it is about 20 miles from her home to the Medical Division at Lefrak City. She drove her car there. She stated that her [REDACTED] condition is the result of the events of September 11, 2001. She stated that she began to suffer from it in the last few years. She has been on [REDACTED] medication for about two years, about six months prior to the incident of September of 2009. Following her visit to the hospital, the Respondent stated, she was taking [REDACTED]. She said she also takes [REDACTED]. She stated that she was on different prescriptions than usual, as well as antibiotics.

With reference to her conversation with Johnsen on June 21, 2009, the Respondent stated that it was a Sunday, Father's Day, and she was in the locker room a little after 1615 hours. Someone told her that Johnsen was looking for her. When she got to his office, he was upset that she had kept Sergeant Lucas from the day tour. She said that pretty much the entire command, which is male, had the day off and she only had herself and Todino on the 4 x 12 so she had kept Lucas on the desk past his tour. She stated that Johnsen never mentioned her tours in that discussion. She said the platoon was split into two tours about a week after that. She testified that Taylor never told her

that her tour was 6 x 2 prior to August. She stated that she was the night platoon commander and responsible for both tours, so she never asked what her tour was.

She agreed that Taylor did inquire as to why she was in at 1545 hours on July 11, 2009, but that they never discussed re-roll call so she could speak to the 4 x 12 group. The Respondent acknowledged that, at her official Department interview, she had mentioned that Taylor said something about her tour starting later but he did not know when that would go into effect. She also agreed that she stated then that her tours on the roll call remained the same and that that is still her answer now.

With regard to her Activity Log, the Respondent stated that she would record large-scale events that she would respond to, like crimes in progress and members of the service being injured, but not things that were considered routine patrol. She stated that she did not make entries for routine patrol beyond noting that in her Activity Log.

She recalled speaking to Baer on September 19, 2009 and recalled him telling her that there were two members of the service outside her residence. She recalled making a phone call inquiring whether she had to speak to the people outside her residence.

The Respondent was asked if she ever inquired why she was not included in meetings about the command. She said she did, but she did not remember who she spoke to; it could have been the inspector. She was told that her presence was not necessary. She said she did inquire because she believes that precinct management meetings are important. She agreed that during the summer, there were members of the command who were regularly at the precinct and some who were not. She agreed that she was the only nighttime lieutenant assigned to the summer detail.

### FINDINGS AND ANALYSIS

The Respondent, a probationary lieutenant, was assigned in June of 2009 to serve in a summer detail in the 60 Precinct, which covers Coney Island, a well known summer beach and amusement area. The detail was to last until after Labor Day in September.

The Respondent is charged with seven specifications arising out of several distinct incidents. This Court has rearranged the specifications, grouped them by the underlying events and put those items in chronological order, to facilitate the analysis.

#### Change of tour and unauthorized overtime

Specification No. 4 alleges that the Respondent performed "unauthorized tour change[s] on approximately forty-five (45) occasions," while Specification No. 5 claims that she performed "unauthorized overtime on approximately twenty-nine (29) occasions." Both specifications allege that this occurred "on or about and in between June 4, 2009 and September 20, 2009," which is the entire time that the Respondent was assigned to the summer detail.<sup>7</sup>

Specification No. 4, regarding the alleged unauthorized tour changes, is actually comprised of at least two parts; those alleged tour changes that are connected with the alleged unauthorized overtime in Specification No. 5 and those that are not linked to any overtime.

Perhaps the most serious charges in this case involve the approximately 29 occasions where the Department alleges that the Respondent created the need for

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<sup>7</sup> Respondent was suspended on September 20, 2009; the formal end of the summer detail occurred a few days later.

overtime by shifting the start of her tour. On those days, the Department claims, the Respondent was supposed to work essentially from 6:00 p.m. to 2:00 a.m.<sup>8</sup> The Respondent, in fact, worked a tour that essentially went from 4:00 p.m. to 2:00 a.m., putting in for overtime for the last two hours. The Department's claim is that the Respondent, without authorization, changed her tour to start early. Because she was responsible to "close up" Coney Island at 2:00 a.m. or later as required, the change resulted in unauthorized overtime. Thus, as to those days, the charges of overtime abuse and unauthorized tour changes are intertwined.

The problem with these charges is that the earlier tour start for the Respondent appears on the printed roll calls and on the summer command roster. All of the overtime slips were signed as approved. In short, all of the available paperwork shows that the Respondent was authorized to work the tours as she did.

Johnsen testified that he verbally told the Respondent to work the later tour and he expected her to follow that verbal order. That is certainly a reasonable argument but it only goes so far. Human memory is fallible; that is one of the reasons why this Department keeps extensive written records regarding virtually every activity performed by members of the service.<sup>9</sup>

From an administrative point of view, roll calls need to be up-to-date and amended when necessary to reflect the actual tours that members work. Overtime needs to be reviewed. No one expects the commanding officer of a very busy precinct to review

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<sup>8</sup> None of the tours start or end exactly on the hour, for instance the 6:00 p.m. tour began at 5:30 p.m. In most of the testimony, the start and end times were referred to as being on the hour. For the sake of clarity and simplicity, tours will generally be referred to as starting and ending on the hour in this decision.

<sup>9</sup> The testimony on when and how the Respondent was given this instruction is somewhat vague. Johnsen said he told her early in the summer detail. Then, in July, he saw her in the precinct early and instructed her again. Taylor was not present for the first instruction and said in July he was instructed by Johnsen to speak to her about start time, which he did. The Respondent denies these events occurred but agrees she was told on August 18, 2009.

these documents daily but some level of review is essential by himself or some subordinate officer in a time reasonably close to the event. Had these charges been brought a few days or even a few weeks after the events, the discrepancies between the written records and the claimed verbal orders might be explained away. In this case, however, the alleged improper tour changes and unauthorized overtime were first discovered in late September after an unrelated incident caused an audit of the Respondent's summer activities. Thus, the entire duration of the detail, roughly three months, went by with no supervisor noticing the alleged inappropriate overtime or taking any recorded action regarding the alleged tour changes.<sup>10</sup>

Johnsen and Taylor are the only two people who claimed to have known about this verbal order. As commanding officer and executive officer, respectively, they had a responsibility to see that the roll call and roster accurately reflected what they claim to have been the Respondent's correct tour. Even Dechen, the administrative lieutenant, knew nothing about this verbal change in Respondent's tour. Having the Respondent function on a verbal order put her in peril. Had the Supervisor of Patrol, IAB or any other auditing unit come into the precinct between 4:00 p.m. and 6:00 p.m. the Respondent would have been deemed AWOL if she had followed the verbal order.<sup>11</sup> On the other hand, by following the roll call as she did, she was and is, in peril for failing to follow a verbal order.

Then, there is the matter of the overtime slips. Every slip regarding overtime that

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<sup>10</sup> Johnsen stated that he noticed at one point in July that the Respondent was in early and re-instructed her on when she was to start her tour. In spite of this, he took no action to check on earlier tours. Nor given the fact that she had already allegedly violated an earlier order to report for work at 1730, did he take any action to see that she was following his order this time.

<sup>11</sup> It is worth noting that the Department Advocate's Office routinely asks this Court to make findings of guilt and impose disciplinary penalties based on just the kind of Departmental records that we are asked to ignore in this case.

is the subject of the charges herein was signed as approved. If Johnsen and Taylor were satisfied that it was acceptable to work on verbal orders alone, then they had a responsibility to insure that overtime slips were not incorrectly approved as was claimed by the Department at this trial. While it is true that neither Johnsen nor Taylor themselves signed these overtime slips, they had a responsibility to insure that whoever they empowered to sign those slips had the information needed regarding the Respondent's tours so that they could properly check before allowing those slips to be submitted for payment. Here again we come back to the paperwork, because if whoever signed the overtime slips consulted the roll call, he or she would have found the tours listed by the Respondent on her overtime slips to be in accordance with those Department records. Indeed, Dechen testified that he reviewed the overtime and, of course, he found no problem because the slips were in accord with other written Department records.

Both Johnsen and Taylor had a responsibility to insure that their verbal directives, which involved an ongoing course of conduct, were reflected in the Department paperwork, in particular but not limited to the roll calls. By failing to do that, they created a problem for themselves, for the Respondent, and for the Department.

Because all available Department records are consistent with overtime the Respondent applied for, the Respondent is found Not Guilty of Specification No. 5.<sup>12</sup> The Respondent is also found Not Guilty of that portion of Specification No. 4, charging unauthorized tour changes, insofar as those charges are related to the unauthorized overtime referenced in Specification No. 5.

There are several dates within Specification No. 4 that the Respondent has pled

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<sup>12</sup> In its closing argument, the Department conceded that it improperly included four dates from June 12 to 15, 2009, in the overtime specification. These dates, it concedes, predate any verbal order Johnsen recalled giving.

guilty to. The Respondent acknowledges that on August 18, 2009, Johnsen did tell her that she was not to start earlier than 1730 (the start time of the 6 x 2 tour). For a period of six days, from August 28 through September 4, 2009, the Respondent changed her tour to start an hour earlier than it should have. No overtime was involved. The Respondent admitted to this and offered, in mitigation, a claim that these were rainy days and that there was no need for her to be on duty until 2:00 a.m. The Respondent is found Guilty of Specification No. 4, with respect to those six days in which she acknowledged her guilt.

There is one additional period of time in this alleged 45-day period. The Respondent worked four tours between the last time she performed overtime (August 17, 2009) and the first day she admitted to starting work early (August 24, 2009). On those four tours, the Respondent did indeed come in before the 1730 tour start directed by Johnsen. However, she signed out on each of those tours after the time she would have otherwise completed her tour (0130 hours.) without requesting overtime. On each of those days, the Respondent was therefore available for duty and within the confines of the precinct both before the start and after the end of her tour. While it is true that she was there early, it is obviously absurd to charge her with misconduct for this and, in any event, this conduct could not be characterized as an "unauthorized tour change" since she was present for the entirety of her scheduled tour. The Respondent is therefore found Not Guilty as to these dates.

#### Activity Log

Specification No. 6 alleges that the Respondent failed to make proper entries in

her Activity Log "regarding tasks performed after 0030 hours."

This specification does not charge the Respondent generally with failing to make Activity Log entries and, indeed, implicit in this specification is the notion that the Respondent not only knows how to make proper entries but that she did so up until 30 minutes after midnight on each of her tours. No specific dates are cited and the entire period of her work on the summer detail is included.

The specification fails to tell us what is missing after 0030 hours and, examining the Respondent's Activity Logs, there is no clear distinction between the nature of the entries made before 0030 hours and those made after. In this regard, the specification is flawed because it fails to state what issue it is intended to address.

Hurst did provide some general testimony about the Respondent's failure to document her reason to justify her overtime as being what this charge is about. The first problem with this is that there are a number of days when the Respondent worked past 0030 hours without being on overtime.

In any event, the Respondent's testimony is that the overtime was to extend her tour so that she would be there at the start and remain until the detail concluded at 2:00 a.m. The overtime was not justified by an event, such as a shooting or other emergency incident, but by an ongoing need to provide supervision. When such events occurred, they were recorded in her Activity Log. The Court has already noted that, based on the existing records, the Respondent had every reason to believe that she was entitled to work the overtime and therefore no special notation was needed to explain it.

There is no evidence before this Court of any specific failure to document events in her Activity Log starting at 30 minutes after midnight or, for that matter, at any point

in time and in any way. The Respondent is found Not Guilty of Specification No. 6.

### The Vacation Incident

Specification No. 7 alleges that the Respondent was absent from her assignment without permission or authority on September 15, 2009, and on September 16, 2009. The Respondent had made a vacation pick in her permanent command before being assigned to the Coney Island summer detail. She had requested that she be given days that included Labor Day weekend because she had a timeshare that could only be used then. Taylor agreed. According to his testimony, the Respondent was to be off from Saturday, September 5, to Monday, September 14, 2009. Because of this accommodation, he said, the Respondent agreed to give up her RDOs, Tuesday, September 15 and Wednesday, September 16, 2009.

The Department offered into evidence, through Taylor, a calendar he kept which included notations he made to demonstrate how his discussions with the Respondent regarding how her vacation was to work (DX 1). Unfortunately for Taylor, his own calendar shows the Respondent as having her RDOs on those two days. He said he forgot to change that notation on his calendar.

The Respondent offered into evidence two Leave of Absence Reports, (RX K and RX L). The first one covers a tour that would have started at 1715 hours on September 5, 2009, and ended at 0200 hours on September 6, 2009. The date was listed as an "IVD" or individual vacation day. The second Leave of Absence Report covered the period from 1715 hours on September 8, 2009, to 0200 hours on September 13, 2009. These five tours were listed as vacation days. Both were signed off as approved by Taylor on

August 17, 2009.

These documents both help and hurt the Department's case. They help in that they indicate that Taylor worked out some kind of deal with the Respondent. They confirm that some kind of tour change was contemplated and they correspond, up to a point, with Taylor's calendar. On that calendar, Taylor noted that the Respondent was to have an IVD on Saturday, September 5, 2009, and the Leave of Absence Report confirms that. On the calendar, Taylor enumerated in his handwriting 1 through 5 on the dates from September 8 through September 12. This corresponds to the second Leave of Absence Report which covers tours that would have started on those days and ends in the early morning hours of Saturday, September 13, 2009. All of this would support Taylor's testimony that the Respondent's two RDOs that week<sup>13</sup> would have been shifted to the prior weekend to allow the Respondent to be off from work on the tour starting on Sunday, September 6, and Monday, Labor Day, September 7, 2009.

That schedule would have brought the Respondent back to work for tours commencing on Sunday, September 13, and Monday, September 14, 2009. On Taylor's calendar, he clearly marked those two days as "RDO" and "C\C." Those notations apparently indicate that he intended the Respondent to have those days as her RDOs and that she was chart-changed for those days to accomplish that.

The problem with the calendar, as has been noted, is that the notation for the next two days, which are the subject of this specification, indicate that the Respondent was RDO.

Neither side put into evidence the roll calls for those two days but it is apparent

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<sup>13</sup> The calendar has the Respondent's RDOs that week as Wednesday, September 9 and Thursday, September 10. This is incorrect. Her RDOs that week would have been Tuesday, September 8, and Wednesday, September 9.

from Taylor's testimony that the roll calls did not show that the Respondent was expected to be at work. This may explain why apparently no one at the precinct reached out to see why the Respondent was not at work on September 15, 2009. Certainly, if a lieutenant was missing from work on a day when she was due in, someone would have reached out to see if she was alright or if somehow she had forgotten to come in.<sup>14</sup> Even Taylor admitted that he did not notice that she was missing until September 16, a full day after she allegedly went AWOL.

Further evidence that the Respondent was not expected to work on these two days is found in the report Dechen was directed to prepare as part of the precinct investigation into the Respondent's conduct. That report lists all of the Respondent's tours for the summer detail and notes what the roll call recorded as her tour. Dechen's entry for September 15 and 16 is that the Respondent was RDO.

It seems likely that Taylor is accurately describing the agreement he believed he had with the Respondent. This is because the Respondent does not satisfactorily explain where the two additional RDOs come from. The argument put forward by Respondent's counsel, that without those RDOs she would have been expected to work seven days in a row, is unpersuasive as that would have been the trade-off for getting consecutive days off. Nevertheless, there is no official Department paperwork to back up the Department's claim. There is no roll call record or any written document recording the chart change. There is no memorandum or any other official document specifically setting forth the exact nature of the chart change or changes. This lack of official paperwork leaves open the very real possibility that the Respondent understood that she was off from work on

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<sup>14</sup> Patrol Guide § 205-18 requires that an investigation be done of members who are absent without authorization. There is no evidence to indicate that such an investigation was conducted.

those two days and explains her failure to appear. Indeed, it may well be that Taylor and the Respondent left the meeting with different understandings of what was expected with regard to the two days in question.

The only documents in evidence regarding this matter are Taylor's personal calendar and Dechen's chart. Both of these *Department exhibits* contradict Taylor's assertion and reflect that the Respondent was off from work on those two days.

The failure of documentation makes this charge unsustainable. The Respondent is found Not Guilty of Specification No. 7.

#### The Sick Day Incident

Specification No. 2 alleges that on September 19, 2009, the Respondent was informed by Sergeant Frank Baer of the Medical Division that she had to speak with two supervisors who were outside her residence and that she failed and neglected to do so. Specification No. 3 alleges that on that same date the Respondent was discourteous to Sergeant Melchionna in that when the sergeant approached the door to her residence she immediately closed the door in an effort to avoid speaking to him. Specification No. 1 alleges that the Respondent was absent from her assignment without permission or authority for one tour on September 20, 2009.

These specifications are the last events chronologically but form the first three specifications in the charges. The reason for this appears to be that these events are the flashpoint that triggered the Respondent's suspension and all the charges dealt with herein.

The Respondent had submitted a request for days off from September 17 through September 20, 2009. On September 16, 2009, Taylor had a conversation with the

Respondent and advised her that her request for those days off had never been approved. According to Taylor, he told her that she was expected to report to work on the evening of September 16. The Respondent, Taylor said, told him she was out of town and told him she was unable to do so. The Respondent denies that a conversation about her coming to work on September 16, 2009, occurred but both agree that she reported for work the next day, September 17, 2009.

On that day, there was a stressful discussion regarding the previous few days between the Respondent and Taylor. During that discussion, the Respondent was reassigned to work as the desk officer on the midnight tour. Taylor explained that the first such tour would have been the midnight tour of September 20, 2009, which actually started at 11:00 pm (2300 hours) on September 19, 2009.

Following that discussion, the Respondent had an [REDACTED] and was taken from the precinct to [REDACTED] Hospital by ambulance. She was released from the hospital the next day, September 18, and visited the district surgeon, Dr. Murray, on September 19, 2009. Murray found her fit for duty and ordered her back to work as of midnight (2400 hours).

The so-called midnight tour or first platoon actually begins prior to midnight at 11:00 p.m. the previous day. The doctor ordered her back to full duty effective at midnight which would have been after the start time of the tour which would go to approximately 7:00 a.m. on the September 20. Ordinarily, a member of the service ordered back to full duty would be required to report to work for that member's next tour of duty following the restoration. If the Respondent was restored to duty effective at midnight then the next tour would start at 11:00 p.m. the evening of September 20 going

into the morning of September 21, 2009.

Taylor determined that the Respondent, who was found fit on the morning of September 19, should return that evening for a tour that ended on the morning of September 20, 2009. Efforts were made by Johnsen to have the Respondent's return to work from sick leave moved up from midnight but he was unsuccessful due to the fact that the weekend medical officer had left for the day. Nonetheless, Taylor and/or Johnsen determined that the Respondent should come in at 11:00 p.m. on September 19, 2009. Phone calls were made and messages were left but there was no direct communication with the Respondent. After these efforts to contact the Respondent directly by phone failed, Johnsen discovered that the Respondent lived near the precinct and sent two officers, Dechen and Melchionna, to her house to let her know, in person, that she was due in at 11:00 p.m. that night. The Respondent did not come to the door and further phone calls were unanswered.

It was determined that, while the Respondent might decline to answer calls from the precinct, she would answer a call from the Medical Division. Baer, who worked at the Medical Division, was asked to call the Respondent and tell her to speak with the officers outside her home. Baer called and the Respondent answered that call from the Medical Division. Baer credibly testified that what he was directed to do, and what he did do, was to tell the Respondent to speak to the officers outside.

The Respondent admits that she went to door, waved in the direction of Dechen and Melchionna and then went back into the house without speaking to anyone. Melchionna testified credibly that in the process she closed the door on him without speaking to him. These are the actions charged in Specification Nos. 2 and 3 and the

Respondent is found Guilty of those specifications.

It should be noted that any claim that the Respondent was somehow too sick to speak is belied by the Respondent's admission that during this period of time she called the Medical Division and asked if there was anyone from the Medical Division outside her home. She was told there was not. The Respondent also acknowledged that she recognized the vehicle that Dechen and Melchionna used to be a Department vehicle and she knew that they were members of the service. It is quite clear from the Respondent's own statements that she was determined not to speak with anyone from the 60 Precinct.

Specification No. 1, the AWOL charge for the midnight tour of September 20, 2009, raises a number of issues. The first has to do with the question of whether Johnsen and/or Taylor could order her into work at 11:00 p.m. on September 19, 2009, when the Medical Division ordered her back to full duty an hour after the start of that tour. Johnsen obviously recognized this issue because, as noted, he tried to get the Medical Division to change the time of her restoration to full duty. That effort was unsuccessful because the weekend medical officer had left for the day. Johnsen and Taylor were determined to order the Respondent into work anyway.

This Court is of the view that the commanding officer of a precinct has a right to do this and the order would have had to have been obeyed. It is a fundamental concept that a member of this paramilitary organization must obey first and grieve later. In this case, it should be noted that the efforts to reach the Respondent started well before 11:00 p.m. There is abundant evidence that the Respondent was intentionally avoiding communication from the 60 Precinct. Had she answered the calls or otherwise responded, there would have been ample time to discuss and, if appropriate, properly

challenge the order before it took effect.

In any event, the fact that the Respondent did not speak to the officers at her door or respond to phone calls does not absolve her of the responsibility to obey that order. Put another way, she cannot avoid the order by engaging in avoidance behavior as she did. The Respondent did not appear for work on the tour that began at 11:00 p.m. on September 19, 2009, and which would have ended at approximately 7:00 a.m. on September 20, 2009. The Respondent is found Guilty of Specification No. 1.

One other issue that came up in relation to this missed tour is worth mentioning because the Respondent's counsel made much of it. This deals with a note in the 60 Precinct Telephone Message Log for Friday, September 18, 2009 (RX-E). On that day, there was a notation at 1500 hours which indicated that the Respondent had called on the subject of her return from sick leave. The message was: "Lt. Samels [sic] will return from sick tomorrow 9-20-09 12 x 8 tour." The next day being September 19, the note indicates that the Respondent intended to go to work on the evening of the September 19 to commence the tour that ended at about 7:00 a.m. on September 20, 2009. The call was actually received by Todino, who testified at this proceeding and mentioned the call in his testimony.

The Respondent has established that Johnsen was unaware of this message. Taylor acknowledged knowing about it but believed it was inconsistent with the Respondent's conduct and that he did not believe she intended to come to work on September 19 at 11:00 p.m. The Court agrees with Taylor's analysis. The call would have preceded the Respondent's visit to the Medical Division on September 19, 2009, and, if anything, that notation indicates the Respondent's state of mind on September 18,

2009, prior to that visit. Given what happened when the Respondent visited the Medical Division on September 19, 2009, Taylor and Johnsen had every reason to believe that the Respondent did not intend to come to work at 11:00 p.m. on September 19, 2009.

### Retaliation

The Respondent has interposed a defense of retaliation. It was also argued that the Respondent was the victim of discrimination and that this also comprises a part of her defense. Although this Court has recommended that the Respondent be found not guilty of many of the charges herein, some discussion of this issue is still necessary.

There is little doubt that the Respondent came into her assignment in the Coney Island summer detail with a poor attitude or developed it very shortly after arriving. She testified at this proceeding that she was unhappy about the assignment. Pegues, who was her commanding officer at the 67 Precinct, said the decision to send her was based on seniority. Certainly, the Respondent was very disappointed about not getting a portion of the weekend off. Most troubling is a statement the Respondent volunteered during her testimony, a statement in which she claimed that, when she first met Johnsen, she knew that he was disappointed when he discovered that she was not a white female. The Respondent provided no credible basis for that conclusion.<sup>15</sup>

Another part of the Respondent's argument that she was retaliated against deals with statements allegedly made by Officer Cohen. While this issue was clearly outside the scope of the charges herein, this Court permitted the Respondent to make a record on

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<sup>15</sup> Examining the Respondent's statements on this issue, it is not clear if she is referring to Johnsen alone or Johnsen along with others in the precinct. What is clear is that she claimed that this occurred on the first meeting and upon Johnsen and possibly others seeing her race for the first time.

this issue because she asserted it further demonstrated the pattern of discrimination against her. Cohen, it is alleged, on two occasions, made locker room statements in which he asserted that he would like to use OC spray on the Respondent, which he knew would aggravate her [REDACTED] In the second statement, he allegedly said that he would not be unhappy if that killed her. These statements were, she said, conveyed to her in confidence by two male African-American officers who wanted to maintain anonymity and the Respondent respected their wishes by not disclosing their names.

It is difficult to understand what the Respondent wanted Johnsen, Taylor or anyone else in the Department to do when she would not provide the names of the officers who allegedly heard the statement. As a police officer, and certainly as a former member of IAB, the Respondent should be aware that without testimony or other evidence to prove that Cohen made such a statement, no disciplinary action is possible. The Respondent's concern that such a statement was made is certainly valid and reasonable. Her complaint that Johnsen did not do enough about it is not reasonable when she failed to cooperate by providing the name of the witness or witnesses. Further, it is clear that the Respondent was aware that the matter had been referred to the Department Advocate and IAB, which meant that any final decision on Cohen was made at a level above that of Johnsen.

There are other reasons why the retaliation claim must fail. Retaliation by its very nature must be a reaction to some act or event. That initial act or event was not established and is based, at best, on kind of surmise. At some point in time, apparently in July, the Respondent testified that she went to a civilian who worked in headquarters and complained about not having a part of the weekends off. The Respondent did not name

that civilian or provide any information regarding that person's position in the Department. Taylor testified that he received a call from Chief Banks, which probably was the result of the conversation between the Respondent and the unnamed civilian at headquarters. There is no evidence, however, that anything Banks, who worked at the PBBS at the time, said or did would have caused Johnsen and/or Taylor to retaliate. Clearly, neither Johnsen nor Taylor was directed to do anything regarding the Respondent's RDOs because they remained as Johnsen had set them. Banks' call seems to have been nothing more than a routine inquiry. The notion that the disciplinary charges herein are a retaliatory action is, at its very best, speculation.

Moreover, for retaliation to be actionable the initial act must be the exercise of some protected act, such as formally reporting corruption or misconduct. If, for instance, the Respondent had lodged a formal complaint that she was improperly being denied a portion of the weekend off, properly filed, might form the possible basis for a retaliation claim. No such complaint appears to have been lodged and what the Respondent seems to have asked for could best be categorized as a favor.

The Respondent claims to have made a second complaint sometime in August regarding how the Cohen matter was handled. This complaint also allegedly involved her complaint about not getting overtime. Again, this matter was brought to the attention of a civilian. All the Respondent would say was that call was made to a cell phone of an unnamed person in headquarters (we do not know if it is the same person whom she spoke to previously) stressing the informal nature of the matter and there is no written report to confirm what the Respondent had actually complained of. The Respondent apparently understood that the matter was to be brought to the attention of the

commanding officer of IAB. There is no evidence that Johnsen or Taylor knew of this referral at anytime prior to the charges being brought and Johnsen specifically testified that he learned of the complaint to IAB in conjunction with an interview that occurred in 2010, well after the charges were brought.

There is also factual evidence that points to a different reason for the charges. In August 2009, the Respondent approached Taylor and told him about the timeshare and asked for a vacation period that included Labor Day weekend. It is clear from both the Respondent and Taylor's testimony that Taylor felt he was doing the Respondent a big favor by not only granting the vacation for that very busy weekend but helping her work out just how to do it and give her a week off as well to enjoy that timeshare.

It is also very clear that he was quite upset when he learned that she had not returned to work for September 15 and 16, 2009. He was further upset when he learned that the Respondent had put in requests for further days off on the next four days. The level of this annoyance was made manifest by the fact that the Respondent was reassigned to be the desk officer on the midnight tour when she returned to work on September 17, 2009.

The level of mistrust increased dramatically when the Respondent went sick right after that discussion and events thereafter led Taylor to believe that she was going to avoid working that first tour at the desk on the night of September 19, 2009. That, in turn, led to the series of calls which went unanswered, engendering further distrust and the dispatch of two supervisors to her home and the additional confrontation there.

It is clear, then, that the events that began on September 16, 2009, when Taylor learned that the Respondent was not back to work and culminated on September 20,

2009, when she did not appear for work, are the genesis of the instant charges. At about this time, audits were conducted of her time and leave records for the summer and the full set of charges that are before this Court emerged.

The facts establish that the charges were not brought in retaliation for some legitimate act that the Respondent did to assert her rights but were a reaction, right or wrong, to events that took place between September 16 and 20, 2009. This Court finds that retaliation was not a factor in bringing the instant charges.

With regard to the discrimination claim, this Court notes that the Respondent set forth a number of issues that she believed demonstrated that she was being discriminated against during the summer detail. In addition to the handling of the incident with Cohen, previously discussed, the Respondent mentioned other things such as the fact that she was denied overtime while others similarly situated received significant overtime, that she was not allowed to meet with her platoon at roll call, and that she was not included in decision-making for her platoon, factors which led, she believed, to a lack of respect for her by her subordinates. She also noted that, in regard to her hospitalization while on duty, no notification was made to her family or the Medical Division and that, as a result, no surgeon visited her.

None of the claimed discrimination issues constitutes a defense to the charges before this Court and are therefore beyond the scope of this proceeding.<sup>16</sup>

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<sup>16</sup> In her written summation, the Advocate argues on the discrimination issue that both Johnsen and Taylor testified that Cohen was transferred back to his command as a result of the alleged comments. That testimony was given, but that testimony is apparently inaccurate, as Cohen appears to have been transferred back to his command at the end of the detail, on September 24, 2009.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on October 15, 1990. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent had nearly 19 years of service with this Department when she was assigned to the summer detail. Her personnel records reflect no prior disciplinary action of any kind. According to those records, she has never been categorized as chronic sick. Her overall sick leave record shows no evidence of sick leave abuse. Her performance evaluations, with the exception of the last one, for 2009, have reflected a high degree of competence.<sup>17</sup> The events that occurred at the very end of the summer detail are certainly not in character for the Respondent.

In examining the totality of the evidence in this case it seems that the events that occurred between September 16 and September 20, 2009, were somewhat explosive in nature and led both sides to re-evaluate events that occurred in the months before. There is no indication that the Respondent complained about discrimination during the course of the Coney Island summer detail any more than the captain or the deputy inspector complained about overtime, tour changes or Activity Logs during that period of time.

It is clear from their actions on September 19 that Johnsen and Taylor believed the Respondent was malingering or otherwise attempting to avoid work. After learning that the Respondent was authorized by the District Surgeon to remain on sick leave until

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<sup>17</sup> Ordinarily this Court reviews the last three evaluations. The Respondent indicated that her last evaluation was done by Johnsen which she is protesting. To provide a clear picture of the Respondent's work history the Court, in the attached confidential memorandum, reviewed evaluations on file since 2001.

2400 hours, an hour after her midnight tour was to start, efforts were made to get the Medical Division to change the end of her sick leave to an earlier time. After those efforts proved unsuccessful, Johnsen decided to order her in to work anyway.

The Respondent handled this situation very poorly and has been found guilty of her conduct related to that. But it was, without doubt, a difficult situation. There is no evidence that the Respondent was malingering. The available evidence is to the contrary. It is uncontested that the Respondent suffers from [REDACTED] it is uncontested that she was taken to [REDACTED] Hospital by ambulance on September 17, 2009; it is uncontested that she was admitted to the hospital and held overnight. Even the fact that the District Surgeon permitted her to remain on sick leave until midnight is some additional evidence that she was not malingering.<sup>18</sup> All of this needs to be considered in assessing an appropriate penalty.

The Respondent also has admitted that on six days at the end of August and into September, she changed her tour without authorization. The Respondent gave uncontested testimony that on most of these days it was rainy. She moved her tour up by about an hour and left about an hour early. No overtime was incurred.

Anyone familiar with Coney Island in the summer knows that rainy days (and nights) are different because the crowds do not come. These tour changes did not become known until the audit at the end of the detail. It is difficult to assess how much of an issue these tour changes would have been if not for the events of September 16

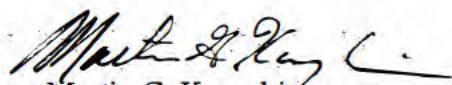
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<sup>18</sup> There was testimony from Taylor indicating that the Respondent told the Medical Division that her tour started at 1730 hours. This is hearsay and no further evidence of this alleged misrepresentation has been provided by the Department. Providing false information to the Medical Division would be misconduct and therefore it is worth noting that there is no charge that the Respondent misinformed the Medical Division about the start time of her tour. Further, it is not clear how, if this were true, it would have effected the District Surgeon's decision to return her to work after midnight.

through September 20, but it seems likely that they would not have been regarded as being very significant.

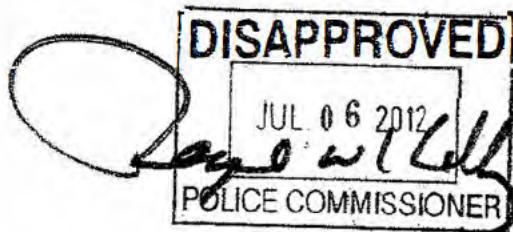
The Respondent served a period of 35 days pre-trial suspension in this matter. Considering all of the abovementioned factors, it is recommended that a penalty of 20 suspension days, previously served, be imposed. It is further recommended that the additional fifteen-day period during which the Respondent had been suspended be restored to her.

Respectfully submitted,



Martin G. Karopkin

Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials

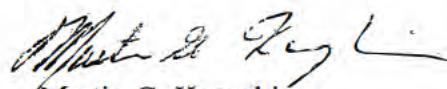
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT DONNA SAMUELS  
TAX REGISTRY NO. 898466  
DISCIPLINARY CASE NO. 85811/09

In 2009, the Respondent received an overall rating of 3.0 "Competent" on her annual performance evaluation. She was rated 4.5 "Extremely Competent/Highly Competent" every year [REDACTED]

[REDACTED]

For your consideration.



Martin G. Karopkin  
Deputy Commissioner Trials